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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 106

RHODE ISLAND HOSPITAL TRUST COMPANY, EXECUTOR OF GEORGE BRIGGS, DECEASED, PLAINTIFF IN ERROR,

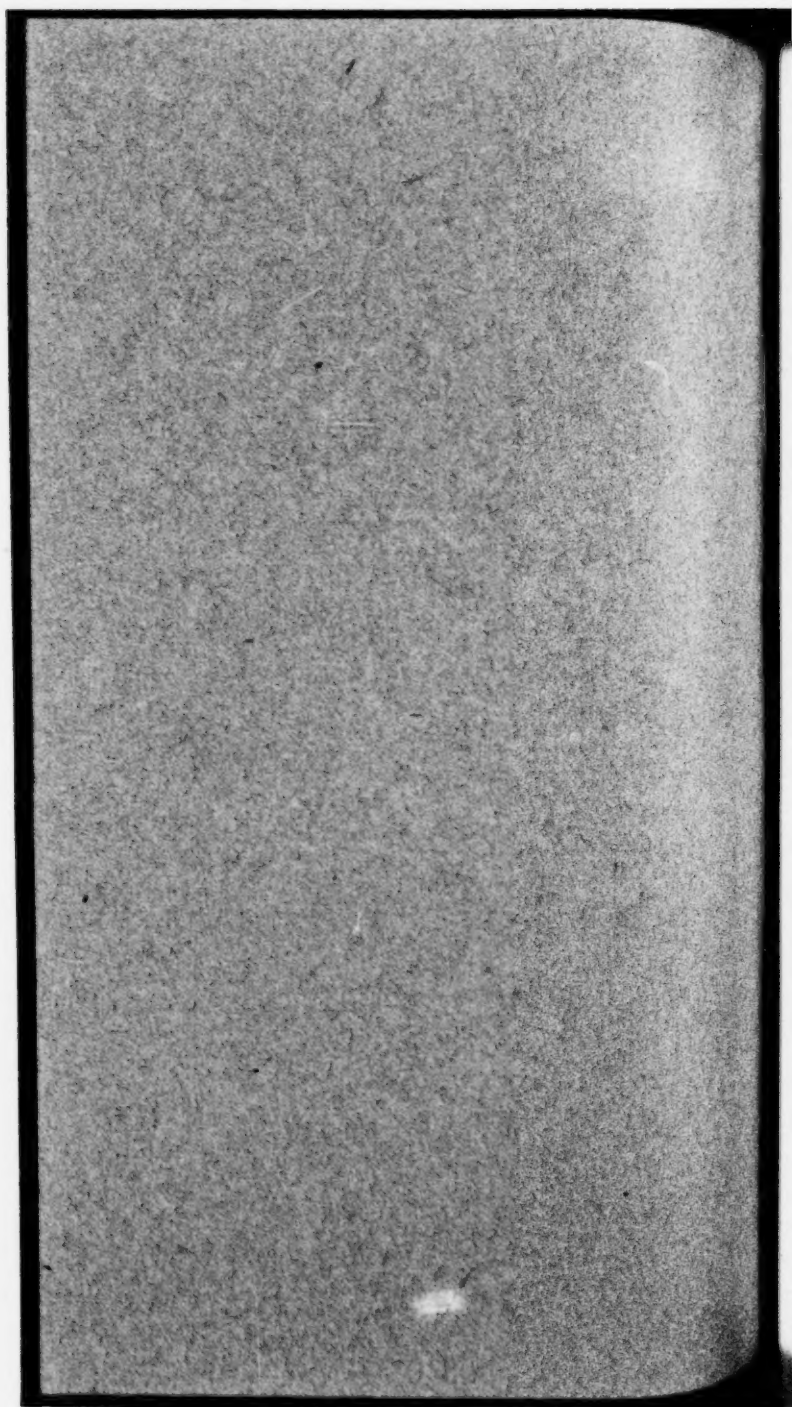
vs.

RUFUS A. DOUGHTON, COMMISSIONER OF REVENUE OF THE STATE OF NORTH CAROLINA

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

FILED JUNE 22, 1926

(30,436)



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[fol. 1] **IN SUPREME COURT OF NORTH CAROLINA**

RHODE ISLAND HOSPITAL TRUST COMPANY, EXECUTOR OF GEORGE BRIGGS, Deceased,

vs.

RUFUS A. DOUGHTON, Commissioner of Revenue of the State of North Carolina

PETITION FOR WRIT OF ERROR

To the Honorable W. A. Hoke, Acting Chief Justice of the Supreme Court of the State of North Carolina:

Now comes the Rhode Island Hospital Trust Company a corporation of the State of Rhode Island, as it is executor of the will of George Briggs, late of said State of Rhode Island, deceased, and respectfully represents:

1. That in the above entitled case, which is a consolidation of two causes, the first being an appeal to the Superior Court of the State of North Carolina by your petitioner from an inheritance tax assessment and levy made by the Commissioner of Revenue of said State of North Carolina, and the second an action at law to recover certain inheritance taxes paid by the executor under protest wherein your petitioner is plaintiff, in which consolidated case a final judgment against the plaintiff was entered during the March term A. D. 1923, by the Superior Court for the County of Wake, in said State, which is the highest court of the State of North Carolina in which [fol. 2] a judgment in this case may be entered according to law, and the court of record wherein the papers in said case are permanently filed and the court in which the full and final record of all proceedings is made.

2. That thereafter an appeal from said final judgment was taken to the Supreme Court of the State of North Carolina, the highest judicial tribunal of said State, which court on February 27th A. D. 1924, handed down a decision and opinion affirming said judgment.

3. That said final judgment involved and was based upon the statute of North Carolina, to-wit, Section 6 of Chapter 90 of the Public Laws of North Carolina, 1919, and particularly upon subsection 7 of said Section and Chapter.

4. That as appears in the record and proceeding in said case the validity of said statute was drawn in question on the ground of its repugnance to the Constitution of the United States and particularly its repugnance to the provisions of Section 1 of Article 14 of the amendments to the Constitution of the United States, and that the decision of said Supreme Court of the State of North Carolina was in favor of the validity of said statute.

5. That as appears of record the petitioner set up and claimed during the trial of said case certain right, title, privilege and immunity under the Constitution of the United States and particularly under the provisions of Section 1 of Article 14 of the amendments [fol. 3] to the Constitution of the United States, and that the decision of said Supreme Court of the State of North Carolina is against such title, right, privilege and immunity as set up and claimed.

6. That the Federal questions raised and the errors complained of fully appear in the records and proceedings of the case and are specifically set forth in the assignment of errors filed herewith.

Wherefore, your petitioners pray that a writ of error from the Supreme Court of the United States may issue in this case to the Supreme Court of the State of North Carolina for the correction of the errors so complained of, and that a transcript of the law and proceedings and papers in this cause duly authenticated by the Clerk of the Supreme Court of the State of North Carolina may be sent to the Supreme Court of the United States as provided by law.

Dated at Providence, in said State of Rhode Island, this 17th day of May A. D. 1924.

Rhode Island Hospital Trust Company, Executor of George Briggs, Deceased, By Its Attorneys, William R. Tillinghast, James C. Collins, Harold B. Tanner, of the Firm of Tillinghast & Collins, 1030 Hospital Trust Bldg., Providence, R. I. Of Counsel, Colin MacR. Makepeace.

[fol. 4] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes the plaintiff, Rhode Island Hospital Trust Company, Executor of George Briggs, deceased, and says that there are errors in the records, proceedings and final judgment in the above case, and files the following assignment of errors upon which it will rely upon the prosecution of its writ of error to review the decision of the court of last resort in the State of North Carolina, namely, the Supreme Court of the State of North Carolina, and the final judgment for the defendant and against the plaintiff entered by the Superior Court of said State for the County of Wake, and affirmed by said decision, and for assignment of error says:

1. That the Supreme Court of the State of North Carolina erred in deciding that subsection 7 of Section 6 of Chapter 90 of the Public Laws of 1919 of the State of North Carolina, (now Section 7776 of the Consolidated Statutes of North Carolina, 1919), does not deprive the plaintiff, Rhode Island Hospital Trust Company,

[fol. 5] Executor as aforesaid, of property without due process of law in violation of Section 1 of Article 14 of the Amendments to the Constitution of the United States.

2. That the Supreme Court of the State of North Carolina erred in deciding that Section 6 of Chapter 90 of the Public Laws, of 1919 of said State, (now Section 7772ff of the Consolidated Statutes of North Carolina, 1919) in so far as it attempts to impose an inheritance tax on the transfer of stock of a foreign corporation belonging to a non-resident decedent is valid and does not deprive the Rhode Island Hospital Company, executor as aforesaid, of property without due process of law in violation of Section 1 of Article 14 of the Amendments to the Constitution of the United States.

3. That the final judgment in the case affirmed by the decision of the Supreme Court of the State of North Carolina is in violation of Section 1 of Article 14 of the Amendments to the Constitution of the United States, in that said decision and final judgment deprive the plaintiff of property without due process of law.

4. That the final judgment in the case affirmed by the decision of the Supreme Court of North Carolina, and said decision, are repugnant to the provisions of Section 1 of Article 14 of the Amendments to the Constitution of the United States in that the enforcement of [fol. 6] said judgment will deprive the plaintiff of property without due process of law.

5. That the Supreme Court of the State of North Carolina erred in sustaining the judgment of non-suit of the Superior Court of the State of North Carolina in said cause in that said judgment deprives the plaintiff of property without due process of law, contrary to the provisions of Section 1 of Article 14 of the Amendments to the Constitution of the United States.

By reason whereof the plaintiff has petitioned for a writ or error and as plaintiff in error prays that the final judgment entered by virtue of the decision of the highest court of the State of North Carolina in which a decision in the suit could be had, be reversed, and a judgment rendered in favor of the plaintiff in the full amount of its claim and for costs.

By Its Attorneys, William R. Tillinghast, James C. Collins, Harold B. Tanner, of the firm of Tillinghast & Collins, 1030 Hospital Trust Bldg., Providence, R. I. Of Counsel, Colin MacR. Makepeace.

[fol. 7] IN SUPREME COURT OF NORTH CAROLINA

WRIT OF ERROR

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of North Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of North Carolina, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Rhode Island Hospital Trust Company, Executor of George Briggs, deceased, and Rufus A. Doughton, Commissioner of Revenue of the State of North Carolina, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws [fol. 8] of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said plaintiff, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, the 24th day of May, in the year of our Lord one thousand nine hundred and twenty-four.

S. A. Ashe, Clerk of the District Court of the United States for the Eastern District of North Carolina.

Allowed by W. A. Hoke, Associate Justice of the Supreme Court of North Carolina, now presiding over said Court. W. A. Hoke, Associate Justice.

[fols. 9 & 10] BOND ON WRIT OF ERROR FOR \$500—Approved; omitted in printing

[fol. 11] CITATION—In usual form showing service on Rufus A. Daughton; omitted in printing

[fol. 12] IN SUPREME COURT OF WAKE COUNTY

Before Cranmer, J. Plaintiff Appealed

Be it remember that on the 8th day of June, 1922, the Rhode Island Hospital Trust Company, executor of the Estate of George Briggs, deceased, caused to be filed and docketed in the office of the Clerk of the Superior Court of Wake County an appeal from the Corporation Commission of the State of North Carolina as follows:

"North Carolina State Tax Commission, Raleigh

RHODE ISLAND HOSPITAL TRUST COMPANY, Executor of George Briggs, Deceased,

v.

R. A. DOUGHTON, Commissioner of Revenue of the State of North Carolina

In re Assessment Briggs Estate

CAPTION

In re Estate of George Briggs, Late of Providence, Rhode Island

Transfer Inheritance Tax—Nonresident Decedents

AFFIDAVIT OF EXECUTOR

Herewith is form of affidavit for information required by the State Tax Commission with reference to the estate of a non-resident decedent. This affidavit and form should be absolutely complete in detail before being sent to the Commission. In order to secure prompt attention, comply strictly with the requirements indicated in this affidavit and form.

Read Carefully the following instructions:

Refer to all estates by name at the head of every communication sent to the Commission.

Send Certificate of Qualification of Executor, or certificate of ap-
[fol. 13] pointment of administrator, or a duly certified copy instead;

If an executor makes this affidavit, strike out the word "Administrator" wherever it appears herein, and if an administrator, strike out the word "Executor" wherever it appears. An administrator with will annexed will attach certified copy of will and indicate that he is "Administrator C. T. A."

Those papers that are required to be certified must be certified by the public official under whose jurisdiction the estate is, such as probate judge, clerk of Court, surrogate, or other official performing similar duties.

It is absolutely necessary that there be set out in detail the relationship of beneficiaries to decedent, the interest of such beneficiaries, and whether or not they survived the decedent. The age at the time of death of decedent of beneficiaries who are life tenants or annuitants must be given.

Notaries public must affix seal to affidavit and state date of expiration of commission.

In the event that any tax is ascertained to be due, this must be paid before waiver is issued for the transfer of stock or other property in North Carolina.

Affidavit of Executor

Gilbert A. Harrington, as he is Tr. Officer of the R. I. Hospital Tr. Co., Executor of the estate of the above named decedent, being duly sworn, deposes and says:

1. Decedent died testate October 29th, 1919.
2. Address of executor is 15 Westminster Street, Providence, R. I.
3. Attorney- for estate is Tillinghast & Collins, and its address is 15 Westminster St., Providence, R. I.
4. Total value of realty, less mortgages (Schedule A) is: \$22,860.00.
5. Total value of personalty, (Schedule B), is, \$787,336.08.
6. Total value of estate, wherever situate, \$810,196.08.
7. Total amount of debts (exclusive of mortgages on realty, shown on Schedule C, is \$11,986.67.
- [fol. 14] 8. Net value of estate is \$798,209.41.
9. That decedent at time of death owned property within, or subject to the jurisdiction of, the State of North Carolina, as follows:
 Realty, less mortgages (Schedule D), None.
 Personalty (Schedule E), \$114,100.00.
 Total value of realty and personalty of estate subject to the jurisdiction of the State of North Carolina (Schedules D and E), \$114,100.00.
10. Names and ages of beneficiaries, relationship to the deceased, interest of beneficiaries, exemptions claimed, are as follows:
 Names: George Briggs, Jr.
 Relationship: Son.
 Survived decedent, yes or no: Yes.

Age of Life tenants or annuitants at death of decedent:—.

Interest of beneficiary in estate	Amount of exemption and in what State claimed
Specific Stock	\$41,000.00
Chattels	6,161.00
R. I. Realty	22,860.00

Trust of Residue

Mary Ella Briggs. Wife. Yes. 63 years. George Briggs, Jr. Son. Yes. 34 years.

Wife: Annuity of \$1,200.00 until remarriage.

Son: As to balance of residue, income of $\frac{1}{2}$ until 35 years; then income of $\frac{3}{4}$ until 40 years (remainder to accumulate) then total income for life.

The will does not expressly provide for the distribution of the property on the death of George Briggs, Jr., leaving children surviving him, and this is the most likely contingency considering the ages of the parties and the fact that he has the following children:

Jacqueline Virginia Briggs, age 10 years;

George Duncan Briggs, age 8 years;

Phillip Briggs, age 5 years;

Doris Emily Briggs, age 2 years.

[fol. 15] Very possibly the will would be construed to mean that the children should share the property equally; if not, the trust would fail and the remainder after the life estate of George Briggs, Jr., would pass by intestacy, and is now vested one-half in Mary Ella Briggs, and one-half in George Briggs, Jr.

The following other possibilities are provided for in the will.

1. If George Briggs, Jr., dies leaving neither wife nor children: Charles Briggs, or issue, brother, (predeceased); Ella F. B. Young, or issue, sister (predeceased testator); Emily M. Malone, or issue, sister: Equal shares of income, and, after death of Mary Ella Briggs, of principal of residuary trust.

2. If George Briggs, Jr., dies before his mother, leaving a child or wife and children: Until he would have been 40 years of age, they take the same proportion of the income of the trust that he would have taken, and after that, the entire income for the life of Doris Briggs, age 35 years; on her death the property being divided among the testator's then next of kin.

3. If George Briggs, Jr., dies leaving a wife, but no children: Doris Briggs, son's wife, yes, 35 years: Life interest in $\frac{1}{2}$ of income.

Charles Briggs, or issue, brother, (predeceased testator); Ella F. B. Young, or issue; sister (predeceased testator); Emily M. Malone, or issue, sister: Equal shares of balance of income, and, after death of Mary Ella Briggs and Doris Briggs, of the principal.

[fol. 16] 12. That the following schedules are full, true and correct statements of all property belonging to decedent at time of death, of all claims and debts against decedent, and expenses in connection with the settlement of the estate:

Schedule A

Realty, Wherever Situate, and Statement of Liens and Encumbrances upon Each Parcel at Death of Decedent

Description	Assessed value for year of decedent's death	Estimated market value	Amount of lien or encumbrance
Land and buildings in Providence, Rhode Island	\$22,860.00	\$22,860.00	.....
Total	22,860.00	22,860.00	.....

Schedule "F"

Stocks	Shares	At	
410 J. Briggs & Co.....	100		\$41,000
1,200 The Pullman Co.....	126		151,200
200 C. M. & St. P. R. R. Co. Com.....	42½		8,500
300 " " " " " " Pfd.....	63		18,900
500 C. & N. W. R. R. Co. Com.....	91½		45,750
500 Great Northern R. R. Co. Pfd....	85		42,500
200 Northern Pac. R. R. Co.....	85¾		17,150
500 Amer. Tel. & Tel. Co.....	99		49,500
300 Amer. Express Co.....	85		23,500
100 Wells Fargo Express Co.....	58		5,800
150 American Caramel Co. Pfd.....	85		12,750
120 Phenix Nat. Bank, Providence....	107		12,600
200 American Tobacco Co. Pfd.....	98		19,600
100 Liggett & Myers Tob. Co. Com....	225		22,500
200 " " " " " Pfd.....	110½		22,100
160 P. Lorillard Co., Com.....	220		35,200
200 " " " Pfd.....	110		22,000
100 R. J. Reynolds Tob. Co. Com....	525		52,500
100 " " " " " Pfd.....	111		11,100
100 American Snuff Co. Pfd.....	80		8,000
100 " " " Com.....	120		12,000
270 Imp. Tob. Co. of England.....	12		3,240

[fol. 17]

100 R. J. Reynolds Tob. Co. Com. "B"	505	\$50,500
400 Temporary Certificates for shs. A. T. Securities Corporation.....	76	30,400

Dividend scrip:

R. J. Reynolds Tobacco Co.:

No. 13 for Dividend #77	\$500
No. 53 for Dividend #78	450
No. 53 for Dividend #79	600

1,550 @ .. 99

1,534.50

American Tobacco Co.:

No. A362, Series A, Due	
Mar. 1, 1921.....	\$500
No. 369, Series B, due	
Mar. 1, 1921.....	500
No. C380, Series C, due	
Mar. 1, 1921.....	500
No. 380, Series D, due	
Mar. 1, 1921.....	500
No. 393, Series E, due	
Mar. 1, 1921.....	500
No. 397, Series F, due	
Mar. 1, 1921.....	500

\$3,000 @ .. 185

5,550

\$727,614.50

Schedule "B"

Personalty, Wherever Situate

Cash in hand.....	\$360
Cash on deposit, as follows: Call account, R. I. Hospital Tr. Co.....	10,157.98

\$10,517.98

Promissory notes, bonds and mortgages:

Corporate Stocks and bonds:	Par value	Market value
— — — — —	\$.....	\$.....
— — — — —
See Schedule "F".....	727,614.50

United States and State bonds, accrued interest to be included:

\$10,000 U. S. First Liberty Loan	
Conv. 4¼%	9,510.00
\$10,000 U. S. Second Liberty	
Loan Conv. 4¼%	9,322.00
[fol. 18]	
\$10,000 U. S. Fourth Liberty	
Loan Con. 4¼%	\$9,330.00
\$10,000 U. S. Victory Loan 4¾%	9,954.00

\$38,116.00

Diamonds, jewelry	200.00
Due from estate of Chas. Briggs.....	200.00
Insurance payable to estate of decedent: Accrued interest and dividends.....	1,853.60
Value of all other personalty of any kind or nature	8,834.00
Total value of all personalty.....	\$787,336.08

Schedule "C"

Debts and Claims Against Estate Other Than Mortgages on Realty

(If any claims are secured by collateral, state what property has been pledged.)

Debt or claim of	Nature of	When due	Amount
Calef Bros.	Supplies.....	.....	\$78.40
Blanding & Blanding ...	Druggists.....	.....	7.13
Providence Tel. Co.....	Service.....	.....	11.31
Providence Gas Co.....	Supplies.....	.....	9.33
Callender, McAsland & Troup Company	Merchandise ..	.....	32.53
Ochee Spring Water Co..	Supplies.....	.....	1.65
Narragansett Elec. Co..	Supplies.....	.....	.90
Tilden-Thurber Corp....	.....	.....	6.00
A. S. Doane.....	.....	.....	1.88
George Ellis & Co.....	.....	.....	1.13
Belcher & Loomis Hdw. Co.	Supplies.....	.....	1.00
Geo. L. Clafin Co.....	Druggists.....	.....	110.00
Bricken Elieson .....	.....	.....	48.00
Mary E. Forrest.....	.....	.....	90.00
Wayland Pharmacy	Supplies.....	.....	12.67
Providence Ice Co.....	Supplies.....	.....	11.79
Fairoaks Farm	Supplies.....	.....	29.36
Gertrude W. Barney....	.....	.....	36.80
S. Newell Smith, Jr., M. D.	Services.....	.....	144.00
Dexter Asylum .....	.....	.....	6.00
Louttit Laundry Co.....	Service.....	.....	7.13
J. Briggs & Sons Co.....	.....	.....	527.95
W. A. Huse & Son.....	.....	.....	26.16
Funeral expenses .....	.....	.....	541.50
[fol. 19] Administration expenses (estimated).....	.....	.....	243.14
Attorneys' fees, court charges, etc., say.....	.....	.....	2,000.00
Executors, administrator's commissions, say.....	.....	.....	8,000.00
Total .....	.....	.....	\$11,986.67

Schedule "D"

Realty of Decedent in State of North Carolina

Description: —.

Assessed value for year of decedent's death: —.

Estimated market value: —.

Amount of Lien or encumbrance: —.

Value of Equity: —.

Schedule "E"

Personalty of Decedent Within or Subject to Jurisdiction of State of North Carolina

Cash on Deposit in: None.

Promissory notes, bonds and mortgages in State of North Carolina at time of death: None.

Corporate stocks and bonds within or subject to jurisdiction of State of North Carolina: —.

Stock Belonging to Estate of George Briggs as of October 29th, 1919

	Par value	Market value
100 shs. R. J. Reynolds Tob. Co. Pfd..	100	\$11,100
100 shs. R. J. Reynolds Tob. Co. Com..	100	52,500
100 shs. R. J. Reynolds Tob. Co. Com..	100	50,500
Total		\$114,100.00

On August 20, 1920, the 100 shares of common stock par \$100.00 was exchanged for 400 shares common stock, par \$25; the 100 shares common "B" stock, par \$100, was exchanged for 400 shares common "B" stock, par \$25. There was then paid a 200% stock dividend on both common and common "B" in the common "B" stock, giving a total stock dividend of 1,600 shares common "B." The executor therefore asks waivers on the following property:

100 shares R. J. Reynolds Tobacco Co. \$100 pfd.

400 shares R. J. Reynolds Tobacco Co. 25 com.

2,000 shares R. J. Reynolds Tobacco Co. 25 com. "B."

Total, \$—.

[fol. 20] 13. That decedent owned no stock or bonds in corporations held in the name of some other person, except such stocks and bonds as are included in Schedule "E" above.

14. That decedent, so far as affiant has knowledge, information or belief, has made no transfer or gift of realty or personalty subject to the jurisdiction of the State of North Carolina, within five years

prior to decedent's death, without full and adequate consideration, to relatives or others, except as follows:—None.

(Signed) Gilbert A. Harrington, Tr. Officer of Rhode Island Hosp. Trust Co., Executor.

Sworn to and subscribed before me this 5th day of April, 1922.

(Signed) John A. Anderson, Notary Public, State of Rhode Island.

IN SUPERIOR COURT OF WAKE COUNTY

RETURN OF COMMISSIONER TO NOTICE OF APPEAL

A. D. Watts, Commissioner of Revenue of the State of North Carolina, hereby makes the following return to the notice of appeal attached hereto;

The North Carolina assets of the estate of George Briggs consisted of investment in the R. J. Reynolds Tobacco Company as follows:

Stocks	\$114,100.00
Dividend scrip . . .	1,534.50

\$115,635.50 @ 66-2/3% = \$77,089.67.

Upon this \$77,089.67 an inheritance tax and interest in the sum of \$2,658.85 was assessed and collected.

This assessment was made under authority of subsection Seventh, Section 6, Chapter 90, Public Laws of 1919, which reads as follows:

"The words 'such property or any part thereof or interest therein within this State' shall include in its meaning bonds and shares of stock in any incorporated company, incorporated in any other State or country, when such incorporated company is the owner of property [fol. 21] in this state, and if 50 per cent or more of its property is located in this State, and when bonds or shares of stock in any such Company not incorporated in this State, and owning property in this State, are transferred by inheritance, the valuation upon which the tax shall be computed shall be the proportion of the total value of such bonds or shares which the property owned by such company in this State bears to the total property owned by such Company."

In the year 1919 the R. J. Reynolds Tobacco Co. reported 66-2/3 of its property invested in the State of North Carolina.

This the 7th day of June, 1922.

A. D. Watts, Commissioner of Revenue.

IN SUPERIOR COURT OF WAKE COUNTY

NOTICE OF APPEAL—May 31, 1922

Hon. A. D. Watts, Commissioner of Revenue, Raleigh, N. C.

DEAR SIR: The Rhode Island Hospital Trust Company of Providence, Rhode Island, as executor under the will of George Briggs, late of the State of Rhode Island, deceased, herewith pays to you under protest the sum of \$2,658.85, this sum being demanded by you as the transfer inheritance tax on the transfer of certain shares of stock and scrip of the R. J. Reynolds Tobacco Company, a New Jersey corporation, which shares and scrip belonged to George Briggs at the time of his death.

The said Rhode Island Hospital Trust Company, as executors, hereby pleads and alleges:

1. That the statute under which the tax is assessed is unconstitutional in that it provides for an inheritance tax on the transfer of the stock of a corporation not incorporated under the laws of North Carolina and owned by a non-resident decedent at the time of his death:

2. That in assessing said tax, dividend scrip of the face value of \$1550.00 has been included as taxable, whereas the law under which this tax is assessed does not apply to dividend scrip.

The said Rhode Island Hospital Trust Company, as Executor [fol. 22] hereby gives notice of an appeal from your decision to the Superior Court. This notice of an appeal is hereby given to you in conformity with the provisions of Section 15, Chapter 34, Laws of 1921. We will be pleased if you will accept service of this notice.

This the 31st day of May, 1922.

Rhode Island Hospital Trust Co., Executor of George Briggs.
Deceased, by Pou, Bailey & Pou, Its Attorneys.

I hereby accept service of the above notice of an appeal to the Superior Court by the Rhode Island Hospital Trust Company, as executor of George Briggs, deceased.

This the 31st day of May, 1922.

A. D. Watts, Commissioner of Revenue.

IN SUPERIOR COURT OF WAKE COUNTY

OUTLINE OF DEFENSES AND ASSIGNMENT OF ERRORS

Rhode Island Hospital Trust Company, executor of the last will and testament of George Briggs, appeals to the Superior Court of Wake County from the order, ruling and decision of the Commissioner of Revenue rendered in the matter of the claim of the State of

North Carolina for inheritance tax upon certain shares of capital stock of R. J. Reynolds Tobacco Company belonging to the estate of George Briggs.

1. And in connection with the said appeal, said appellant alleges and says that said order, ruling and decision of the Commissioner of Revenue were contrary to law, and that the statute or North Carolina under which the Commissioner of Revenue claims the right to assess the tax from appellant is in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that if the said law should be enforced it would result in depriving appellant of property without compensation and without due process of law, and would be a denial to appellant of equal protection of law. The appellant hereby expressly pleads the said 1st section of the Fourteenth [fol. 23] Amendment to the Constitution of the United States as a defense to the claim of the Commissioner of Revenue and to the State of North Carolina for the payment of the tax by appellant upon the said shares of capital stock in the said R. J. Reynolds Tobacco Company; and the appellant does rely upon the said 1st section of the Fourteenth Amendment to the Constitution of the United States as a protection against and a defense to any claim of the Commissioner of Revenue or the State of North Carolina for the tax to be paid upon or out of the shares of capital stock of R. J. Reynolds Tobacco Company owned by the estate of the late George Briggs.

2. Appellant further sayeth that the said George Briggs never was a citizen or resident of the State of North Carolina and was never subject to taxation under and by virtue of the laws of the said State of North Carolina; that he resided for many years in the State of Rhode Island, and was, at the time of his death, a citizen and resident of the said State of Rhode Island, and was domiciled therein; that he executed a last will and testament which was admitted to probate in the said State of Rhode Island, and that appellant, Rhode Island Hospital Trust Company, has duly qualified as his executor, and is now engaged in the execution of the trust and administration of his estate. That among the personal property belonging to the said George Briggs were certain shares of the capital stock of R. J. Reynolds Tobacco Co.; that R. J. Reynolds Tobacco Company is a corporation duly chartered and organized under the laws of the State of New Jersey; that under and by virtue of decisions of the Supreme Court of the United States, said R. J. Reynolds Tobacco Company is a citizen, resident and inhabitant of the State of New Jersey, and of no other State.

3. Appellant avers and alleges that the State of North Carolina is without power to impose a tax upon the shares of stock of a New Jersey corporation owned by a citizen of Rhode Island, and any act of the General Assembly of North Carolina which undertakes to im-[fol. 24] pose a tax upon the shares of stock of a New Jersey corporation belonging to a citizen of the State of Rhode Island is migratory and void because the enforcement of such a law would be taking of property of a citizen of Rhode Island without authority of law, without compensation, and without due process of law, and in clear vio-

lation of section 1 of the Fourteenth Amendment to the Constitution of the United States, which appellant again sets up and relies upon as a defense against any claim of the State of North Carolina or of the Commissioner of Revenue for the payment of any taxes under and by virtue of the aforesaid unconstitutional act of the General Assembly of North Carolina. The appellant respectfully prays that the said order, ruling and decision of the Commissioner of Revenue be set aside and declared to be of no effect.

4. Appellant further sayeth that under the aforesaid act of the General Assembly of North Carolina that before it was allowed to perfect this appeal it was required to pay to the Commissioner of Revenue, and did pay to him, the sum of \$2,658.85, the amount of tax claimed by the Commissioner of Revenue upon the said shares of the capital stock of the said R. J. Reynolds Tobacco Company, owned by the estate of George Briggs, but it paid the said amount of money under protest and now demands that the said \$2,658.85, which it was wrongfully and unlawfully required to pay, be returned to it, with interest on the said amount from the date of payment, to-wit, the 31st day of May, 1922.

Respectfully submitted, Rhode Island Hospital Trust Co.,
by Its Attorneys, Pou, Bailey & Pou.

Certified to by A. D. Watts, Commr. of Rev., 8 June, 1922.

IN SUPERIOR COURT OF WAKE COUNTY

STATEMENT RE SUMMONS

And, thereafter, on July 31, 1922, the plaintiff, Rhode Island Trust Company, executor of George Briggs, deceased, sued and prosecuted out of the office of the Clerk of the Superior Court of Wake County, N. C., a summons in words and figures as follows: (Summons, dated 31 July, 1922, and showing service 1 Aug. 1922, filed in original transcript.)

[fol. 25] IN SUPERIOR COURT OF WAKE COUNTY

COMPLAINT

Plaintiff, complaining of defendant, alleges and says:

1. That it is a corporation organized under the laws of the State of Rhode Island, and that it is engaged in doing a trust business, but not doing business in North Carolina.

2. That defendant is Commissioner of Revenue of the State of North Carolina, and that as such he is charged with the collection

of all inheritance taxes due the State of North Carolina; and that he is charged with the collection of inheritance tax upon the transfer of stock owned by non-residents in North Carolina corporations, and in foreign corporations owning property in North Carolina.

3. That George Briggs, deceased, for many years lived in the State of Rhode Island, and that he was a resident, citizen and inhabitant of Rhode Island, and of no other state, at the time of his death on October 29th, 1919, That George Briggs, deceased, has never been a citizen of the State of North Carolina.

4. That plaintiff, Rhode Island Hospital Trust Company, was appointed Executor under the last will and testament of George Briggs on November 25, 1919, by the Municipal Court of the City of Providence, Rhode Island, the said court exercising local probate jurisdiction, and that plaintiff has given bond according to law and has entered upon the discharge of his duties as such executor.

5. That George Briggs, deceased, died owning certain shares of stock in R. J. Reynolds Tobacco Company, to-wit:

- 100 shares of common stock.
- 100 shares of class "B" stock.
- 100 shares of common stock

6. That R. J. Reynolds Tobacco Company is a corporation organized under the laws of the State of New Jersey and of no other state.

7. That in performance of its duty as Executor under the last will and testament of George Briggs, deceased, plaintiff requested that the stock standing in the name of George Briggs, deceased, be transferred to it, but plaintiff was informed by R. J. Reynolds Tobacco Company that this could not be done until an inheritance tax due the State of North Carolina was paid or waived by the Department of Revenue of the State of North Carolina.

8. That plaintiff requested the Department of Revenue to waive this tax in order that the said stock certificates could be transferred, and the said estate of George Briggs, deceased, be settled. That the request for a waiver of the said inheritance tax was denied, and the plaintiff was informed that the said inheritance—amounting to \$2,658.85—had to be paid before the said certificates of stock could be transferred.

9. That in order that the said certificates of stock in R. J. Reynolds Tobacco Company could be transferred and the said estate of George Briggs be settled, plaintiff on the 31st day of May, 1922, paid to the Department of Revenue, under protest, the sum of \$2,658.85, and at that time served written notice upon the Commissioner of Revenue that the said tax was paid under protest and that a suit would be instituted against him for its recovery, and duly demanded the return of the money so paid.

10. The law under which the tax was levied is as follows:

"All bonds and shares of stock or interest therein held by a non-resident of this State in any company incorporated under the laws of some other state or government, which company owns property in this state to the amount of 50 per cent. or more of its total property, shall be subject to the tax imposed under section six hereof, computed upon a valuation which shall be limited to that part of the total valuation thereof which the property owned in this State bears to the total property of such company:" and

"Any incorporated company incorporated in this state and owning property in this State which shall transfer on its books the bonds or shares of stock of any decedent holder of shares of stock in such company exceeding in par value \$500.00, before the inheritance tax, if any, has been paid, shall become liable for the payment of the [fol. 27] said tax, and any property held by such company in this state shall be subject to execution to satisfy same. A receipt or waiver signed by the Commissioner of Revenue of North Carolina shall be full protection for any such company in the transfer of any such stock or bonds." Laws of 1919, Chapter 90, Section 6, sub-section 7; and

Under section 6 of Chapter 90, laws of 1919, sub-section 1, which provides for the computation of said tax.

11. That the tax levied upon and collected under compulsion by defendant from plaintiff upon the transfer of stock owned by plaintiff's testator in a foreign corporation was illegal and wrongful and was a violation of the rights of plaintiff guaranteed to it by the 1st section of the Fourteenth Amendment to the Constitution of the United States. That the enforced collection of said tax was the taking of plaintiff's property by defendant, representing the State of North Carolina, without compensation and without due process of law, and was a denial to plaintiff of the equal protection of the law, all in violation of said section 1 of the Fourteenth Amendment to the Constitution of the United States; the benefit and protection of which plaintiff hereby sets up, pleads and relies upon as a basis for this suit or action brought to recover the tax illegally levied and collected as aforesaid.

12. That the imposition of said tax is a violation of Section 17 of Article One of the Constitution of North Carolina, in that it is the taking of property contrary to the law of the land; the benefit and protection of which plaintiff hereby sets up, pleads and relies upon as a basis for this suit or action brought to recover the tax illegally levied and collected as aforesaid.

13. That it was necessary for plaintiff to pay the tax hereinbefore mentioned although the same was not authorized by law and the same was illegal and void because it was its duty to have the said shares of stock belonging to the estate of George Briggs transferred to it in order that it might carry out the trusts imposed upon it by [fol. 28] the will of the said George Briggs; and the R. J. Reynolds tobacco Company would not make the transfer unless the State of

North Carolina waived the said tax, or unless the said tax was paid, although it might believe that the tax attempted to be collected was illegal and void. Under these circumstances it was necessary for plaintiff to pay the tax under compulsion and duress, protesting the illegality of the same and preserving the right under law to bring suit and recover the same.

14. That this suit is brought under the provisions of section 7979 of the Consolidated Statutes of North Carolina which permits suits to be instituted against any sheriff for the recovery of taxes, collected illegally or without authority, within ninety days after payment; and under section 7974 of the Consolidated Statutes, which, in explaining the meaning of various terms, states: "* * * 4. 'Sheriff.' Every person who is by law authorized to collect taxes, either state or municipal."

Wherefore, plaintiff demands judgment against defendant:

1. For the amount of \$2,658.85, together with interest on said amount at the rate of 6 per centum per annum from May 31st, 1922, until paid;

2. For the costs of this action to be taxed by the Clerk of this Court;

3. For such other and further relief as to the Court may seem just.

Pou, Bailey & Pou, Attorney- for Plaintiff.

Verified by Vice-Pres. of Plaintiff.

IN SUPERIOR COURT OF WAKE COUNTY

ANSWER

The defendant, A. D. Watts, Commissioner of Revenue of the State of North Carolina, answering, says that

1. The allegations contained in articles 1, 2, 3, 4 and 5 of the complaint are true.

2. The allegations contained in article 6 of the complaint are true, with this modification: The R. J. Reynolds Tobacco Company, [fol. 29] while a New Jersey corporation, is domesticated in North Carolina, and has two-thirds of the total value of the property in the latter State.

3. The allegations contained in articles 7, 8 and 9 of the complaint are true.

4. The allegations contained in article 10 of the complaint are true, with this modification: the tax in dispute was levied under the Revenue Act of 1919, now incorporated in the Consolidated Statutes

as Section 7772, et seq. Section 7772 levies as inheritance tax upon the property of a non-resident decedent within the state, and section 7776 expressly declares that shares of stock in a company such as the Reynolds Tobacco Company, though owned by non-resident decedent, shall be property within the state, and subject to the inheritance tax of the State in the proportion that its property in the state bears to its total property, if that proportion is fifty per cent or more. The remainder of article 10 sets out correctly the statute which prohibits the corporation from transferring the stock upon its books in the absence of a waiver from the Commission of Revenue, Consolidated Statutes, Section 7776, sub-section 2.

5. Answering articles 11 and 12 of the complaint, the defendant says that in levying the inheritance tax complained of in this action, he has obeyed strictly the clear and absolute command of the statute; that whether or not the statute is constitutional, he is advised and believes is a judicial question, not to be determined by him in even the first instance, his duty being to administer the laws as they are written, so he submits the question to the Court.

6. Article 13 of the complaint is admitted.

7. It is admitted that if the statute imposing the inheritance tax in this instance is unconstitutional, the plaintiff is entitled to judgment against the defendant for \$2,658.85, with interest and costs.

James S. Manning, Attorney General, Attorney for Defendant.

Verified by A. D. Watts, Comm. Rev.

[fol. 30] IN SUPERIOR COURT OF WAKE COUNTY

REPLY

Plaintiff, replying to paragraph 2 of defendant's answer, alleges and says:

1. That it is a fact that on August 14th, 1906, the R. J. Reynolds Tobacco Company filed with the Secretary of State a certified copy of its charter and a statement of its capital stock authorized, the amount actually issued, the location of its principal office in this state, the name of its agent in charge of its office, the character of the business which it transacts, and the name and post office address of its officers and directors; and that the copies of its said charter and statement were duly certified under its corporate seal.

2. That all of these acts were required of the R. J. Reynolds Tobacco Company before it was permitted to do business in this State; that the performance of these acts did not constitute the said R. J. Reynolds Tobacco Company a North Carolina corporation, but on the contrary they were required of it because it was not a corporation of this state, but was a foreign corporation; and that it is and

remains a foreign corporation, viz; a corporation of the State of New Jersey with its stock books located in the City and State of New York, where its shares of stock are transferred by the Equitable Trust Company, its transfer agent, and what defendant calls "domestication" was only a performance of these acts which the state required to be performed by a foreign corporation before it was permitted to do business in this State.

3. Plaintiff sayeth that it was not within the power of the General Assembly to draw within the taxing power of the State the transfer by will of the shares of stock in said R. J. Reynolds Tobacco Company, a foreign corporation, owned by a person living in Rhode Island, who had never been a citizen of North Carolina, the particular certificates transferred not having been in North Carolina at the date of death of the decedent. And it says that the act of the R. J. Reynolds Tobacco Company in filing a copy of its charter and a [fol. 31] statement as aforesaid could not and did not have the effect of rendering a transfer by will of shares of its stock owned by the late George Briggs, of the State of Rhode Island, subject to the inheritance tax imposed by the State of North Carolina.

Wherefore, plaintiff reiterates and prays for the judgment and relief demanded in its complaint.

Pou, Bailey & Pou, Attorneys for Plaintiff.

Verified by Vice-Pres. of Pltff.

IN SUPERIOR COURT OF WAKE COUNTY

REJOINDER

The defendant, A. D. Watts, Commissioner of Revenue, by way of rejoinder to the reply filed herein, says:

1. That since 1887 the revenue laws of the State have identified the ownership of shares in ordinary corporations with the property itself of the corporation. For many years, and up to and through 1920, the value of the shares of these corporations was estimated by the State Tax Commission under rules and regulations provided in the statute and certified for taxation to the State Treasurer, who collected only the ad valorem tax levied for State purposes. Upon this the statute declared that the share-holder need not list nor pay taxes upon the value of his shares in his hands. The tangible and intangible property of these corporations was listed for taxation by the local assessors. Wherever the value of such corporations thus ascertained by the State Tax Commission exceeded the value of the property locally assessed, the excess was, and is, certified to the local government agencies for taxation there.

2. In the Revenue Act of 1917 this identification of the property of the shareholder with the property of the corporation itself was

carried further, and in the last clause of section 4, Chapter 231, Public Laws of 1917, it is declared as follows:

"Nor shall any individual stockholder of any foreign corporation be required to list or pay taxes on any share of its capital stock, if [fol. 32] two-thirds in value of its entire property is situated and taxed in the State of North Carolina, and the said corporation pays franchise tax on its entire issued and outstanding capital stock at the same rate as paid by domestic corporations."

3. In the Revenue Act of 1919, another clause was incorporated in said provision between the word "Carolina" and the word "and," in line 5 of the above quotation, as follows:

"Or if such corporation has tangible assets within this State assessed for taxation at a value exceeding the par value of the total stock owned by citizens of this State."

4. The defendant is advised and believes that this identification of the shares of stock in such a corporation as R. J. Reynolds Tobacco Company with the property of that corporation itself as simply representing an interest in that property, is a valid and legal and constitutional declaration on the part of the General Assembly of the State. He is, therefore, advised and believes that the shares of stock in the hands of the deceased Briggs, under the North Carolina statutes, represented an interest in the property of the corporation, R. J. Reynolds Tobacco Company, wholly located within the State of North Carolina, to the extent of two-thirds of the value of said stock, and, therefore, as the inheritance tax law taxes the transfer of said property interest in property located in North Carolina only to the extent of fifty per cent of its value, said statute is constitutional and valid, and does not offend either against the state or federal constitution.

James S. Manning, Attorney General. Frank Nash, Asst. Attorney General.

Verified by O. S. Thompson, Clerk.

IN SUPERIOR COURT OF WAKE COUNTY

ORDER CONSOLIDATING COSTS AND SUBSTITUTING DEFENDANT

Upon the motion of Pou, Bailey and Pou, Attorneys for plaintiff, and with the consent and approval of Frank Nash, attorney for defendant, it is ordered and decreed by the Court:

1. That the plaintiff's appeal from the levy and collection of the inheritance tax against the estate of George Briggs, deceased, by defendant, together with the above entitled suit by plaintiff to recover from defendant the amount of the inheritance tax so assessed and paid by plaintiff under protest be and are hereby consolidated into one action, to be heard and disposed as one consolidated action.

2. It appearing to the Court that defendant, A. D. Watts, has resigned his office as Commissioner of Revenue, and that R. A. Doughton has been appointed his successor in office, and that the said R. A. Doughton has duly accepted, qualified, and entered in the discharge of his duties as Commissioner of Revenue, it is ordered by the Court that R. A. Doughton be substituted as defendant in this action in lieu of A. D. Watts, resigned.

This March 24th, 1923.

E. H. Cranmer, Judge Presiding. Frank Nash, Asst. Atty. General.

We consent: Pou, Bailey & Pou, Attys. for Plff.

IN SUPERIOR COURT OF WAKE COUNTY

Agreed Statement of Facts

George Briggs was a resident of the State of Rhode Island, and domiciled therein at the time of his death. He never resided in North Carolina. He died testate October 29th, 1919, leaving a large estate. The plaintiff, the Rhode Island Hospital Trust Company, was appointed executor of the last will and testament of said Briggs, and duly qualified as such before the Municipal Court of the City of Providence, Rhode Island, on the 25th day of November, 1919.

Among other property devised or bequeathed in the will was stock in the R. J. Reynolds Tobacco Company, valued at the time of his death at \$114,100.00, and dividends earned in the same company, represented by dividend scrip issued to him, to the amount of \$1,534.50 value at the time of the testator's death. These two sums represented a total value of \$115,634.50. The R. J. Reynolds Tobacco Company (hereinafter for brevity called the [fol. 34] Tobacco Company) is a corporation created under the laws of the State of New Jersey, and is now, and has at all times named been, a corporation of the State of New Jersey, but, desiring to do business in North Carolina, made application to the Secretary of State for permission to do business in this State in the manner provided in Section 1194 of the Revisal, now Section 1181 of the Consolidated Statutes. For the purpose of obtaining permission to do business in this State, the Tobacco Company, on or about the 14th day of August, 1906, filed with the Secretary of State its application for such license in due form, which said application was upon the blank form substantially as follows:

"APPLICATION FOR DOMESTICATION BY A FOREIGN CORPORATION

The ——— Company, organized under the laws of the State of ———, does hereby make the following statement, in compliance with the provisions of Section 1181 of the Consolidated Statutes of North Carolina.

First. The name of the Corporation is ———.

Second. The location of the registered office is at No. ——— Street, and the location of the principal office in North Carolina is at ———, N. C., County of ———, and ——— is the agent upon whom process may be served.

Third. The character of the business is ———.

Fourth. The amount of the authorized capital stock is \$——. The amount actually issued and outstanding is \$——.

Fifth. The names and addresses of all the directors and officers are as follows:

Names of directors		Address		Date of election or appointment		Term of office
*	*	*	*	*	*	*
Officers:						
President: ———	
Vice-Pres.: ———	
Treas.: ———	
Secretary: ———	
2d Vice-Pres.: ———	

[fol. 35] Sixth. The copy herewith attached is a true and correct copy of the charter or articles of agreement and all amendments.

Witness our hands the — day of ———, A. D. 192——.

———, Pres. ———, Sec. (Corporate Seal.)

SECTION 1181 OF THE CONSOLIDATED STATUTES

"Every foreign corporation, before being permitted to do business in this State, insurance companies excepted, shall file in the office of the Secretary of State a copy of its charter or articles of agreement, attested by its President and Secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized, the amount actually issued, the principal office in this State, the name of the agent in charge of such office; the character of the business which it transacts, and the names and postoffice addresses of its officers and directors. And such corporation shall pay to the Secretary of State, for the use of the State, twenty cents for every one thousand dollars of the total amount of the capital stock authorized to be issued by such corporation, but in no case less than \$25.00 nor more than \$250.00, and also a filing fee of \$5.00. Such corporation may withdraw from the State upon filing in the office of the Secretary of State a statement signed by its president and secretary and attested by its corporate seal, setting forth the fact that such corporation desires to withdraw, and upon

payment to the Secretary of State of a fee of \$5.00. Every corporation failing to comply with the provisions of this section shall forfeit to the State \$500.00, to be recovered with costs in an action to be prosecuted by the Attorney General, who shall prosecute such actions whenever it shall appear that this section has been violated."

And with the said application, said R. J. Reynolds Tobacco Company filed with the Secretary of State a duly authenticated copy of its charter as follows:

[fol. 36] CERTIFICATE OF ORGANIZATION OF R. J. REYNOLDS TOBACCO COMPANY

This is to certify that we, R. J. Reynolds, W. N. Reynolds, J. B. Duke, J. B. Cobb, Geo. M. Gales, C. K. Faucette and D. A. Keller, do hereby associate ourselves into a corporation under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled, "An Act Concerning Corporations, Revision of 1896," and the several supplements thereto and acts amendatory thereof, for the purposes hereinafter mentioned, and to that end we do by this, our Certificate, set forth:

First. That the name which we have assumed to designate such corporation, and to be used in its business and dealings, is "R. J. Reynolds Tobacco Company."

Second. The location and principal office of such corporation in the State of New Jersey is at No. 765 Broad Street, in the City of Newark, in the County of Essex. The name of the agent therein, and in charge thereof, upon whom processes against such corporation may be served, is J. Bayard Kirkpatrick.

Third. The objects for which this corporation is formed are to cure leaf tobacco and to buy, manufacture and sell tobacco in any and all its forms, and to erect or otherwise acquire, factories and buildings, establish, maintain and operate factories, warehouses, agencies and depots for the storing, preparation, cure and manufacture of its tobacco, and for its sale and distribution, and to transport or cause the same to be transported, as an article of commerce, and to do any and all things incidental to the business of trading and manufacturing aforesaid.

This corporation shall also have power to conduct its business or any portion of it in all other states and territories, colonies and dependencies of the United States of America, and in Great Britain and Canada and all other foreign countries, to have one or more offices out of the State of New Jersey, and to hold, purchase, lease, mortgage and convey real and personal property out of the State of [fol. 37] New Jersey, as well as in said State.

Fourth. The total amount of the authorized capital stock of the corporation is \$5,000,000.00, divided into 50,000 shares of the par value of \$100 each.

The amount with which the corporation will commence business is \$1,500.00, which is divided into 15 shares of the par value of \$100 each.

Fifth. The names and post-office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of such subscriptions being the amount of capital stock with which this Company will commence business, are as follows:

Name	Post office address	Shares
R. J. Renolds.....	765 Broad St. Newark, N. J.....	2
W. N. Reynolds.....	765 Broad St. Newark, N. J.....	2
J. B. Duke.....	765 Broad St. Newark, N. J.....	3
J. B. Cobb.....	765 Broad St. Newark, N. J.....	3
Geo. M. Gales.....	765 Broad St. Newark, N. J.....	2
C. K. Faucette.....	765 Broad St. Newark, N. J.....	2
D. A. Keller.....	765 Broad St. Newark, N. J.....	1

Sixth. The Directors of the Corporation shall be classified in respect to the time for which they shall respectively hold office, and at the first election for Directors the several classes shall be elected as follows: Three shall be elected for one year; two shall be elected for two years; and two shall be elected for three years, and at the expiration of their respective terms, their successors shall be elected for three years, so that the term of each Director, after those elected at the first election, shall be three years. If the number of directors shall be at any time changed, the Board of Directors shall have power to re-arrange the classification of the terms of the Directors. Meetings of the Board of Directors need not be held in the State of New Jersey, but may be held in such place or places, in any other State or States as the By-laws of the corporation may from time to time provide. The corporation may, through its Board of Directors, acquire and undertake the whole or any part of the business, property, assets, contracts and liabilities of any person, firm or corporation, if the same are, in their judgment, useful in the business of this corporation.

The Board of Directors shall have the power, by vote of a majority of all the Directors, and without assent or vote of the stockholders, to make, alter, amend and rescind the by-laws of this corporation, to fix the amount to be reserved as working capital, and to fix what number of Directors shall constitute a quorum of the Board.

Seventh. The existence of this corporation shall commence on the date of the filing of this certificate, in the office of the Secretary of State of New Jersey, and shall continue perpetually.

In witness whereof we have hereunto set our hands and seals the third day of April, A. D. 1899.

R. J. Reynolds (Seal), W. N. Reynolds (Seal), J. B. Duke (Seal), J. B. Cobb (Seal), Geo. M. Gales (Seal), C. K. Faucette (Seal), D. A. Keller (Seal).

Signed, sealed, and delivered, in the presence of S. B. Goodale.
(10¢ I. R. Stamp. Cane.)

STATE OF NEW YORK,

City and County of New York:

Be it remembered, that on this third day of April, 1899, before me, S. B. Goodale, a Commissioner of the State of New Jersey, in New York, personally appeared R. J. Reynolds, W. N. Reynolds, J. B. Duke, J. B. Cobb, Geo. M. Gales, C. K. Faucette and D. A. Keller, known to me to be the individuals described in, and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal, this third day of April, A. D. 1899.

S. B. Goodale, Commissioner of New Jersey Resident in New York. (Seal.)

[fol. 39] (10¢ I. R. Stamp. Cane.)

(Endorsed:) "Received in the Clerk's office of the County of Essex, on the 3rd day of April, A. D. 1899, and recorded in Book 16 of Incorp. Bus. Cos. for said County, page 117, etc. William O. Kuebler, Clerk."

"Filed April 4, 1899. George Wurtz, Secretary of State."

We, the undersigned, R. J. Reynolds, President, and Geo. W. Coan, Secretary, respectively, of R. J. Reynolds Tobacco Company, do hereby certify that the foregoing is a copy of the charter or Articles of Incorporation, of R. J. Reynolds Tobacco Company.

In witness whereof, we have signed this attestation and cause to be hereto attached the seal of said R. J. Reynolds Tobacco Company, this 14th day of August, 1906.

R. J. Reynolds, Geo. W. Coan. (Corporate Seal.)

We, the undersigned, R. J. Reynolds, President, and Geo. W. Coan, Secretary, respectively, of R. J. Reynolds Tobacco Company, do hereby certify that the said R. J. Reynolds Tobacco Company has an authorized capital stock of \$5,000,000.00, increased by an amendment to its charter, on the 21st day of February, 1906, to \$10,000,000.00, divided into shares of \$100 each; that there is now issued and outstanding \$7,525,000.00 of said stock; that the principal office of said R. J. Reynolds Tobacco Company in North Carolina is Winston-Salem, North Carolina; the name of the agent in charge of such office is R. J. Reynolds; the character of the business which said corporation transacts is the manufacture, sale and distribution of tobacco and the products of tobacco in any and all its forms; that

the name and post-office address of its officers and directors are as follows:

Officers

R. J. Reynolds.....	President.....	Winston-Salem, N. C.
W. N. Reynolds.....	Vice-Pres.....	" " "
Geo. W. Coan.....	Treasurer.....	" " "

[fol. 40]

Directors

R. J. Reynolds.....	Winston-Salem, N. C.
W. R. Reynolds.....	Winston-Salem, N. C.
W. N. Reynolds.....	Winston-Salem, N. C.
Geo. W. Coan.....	Winston-Salem, N. C.
D. Rich	Winston-Salem, N. C.
R. B. Horn.....	Winston-Salem, N. C.
C. A. Hopman.....	104 1st St., Jersey City, N. J.

In witness whereof, we have hereto signed our names, and caused to be attached hereto, in attestation hereof the corporate seal of R. J. Reynolds Tobacco Company.

R. J. Reynolds, Geo. W. Coan. (Corporate Seal.)

Filed August 14th, 1906. J. Bryan Grimes, Secretary of State.

State of North Carolina. Department of State

Raleigh, March 19, 1923.

I, W. N. Everett, Secretary of State of the State of North Carolina, do hereby certify the foregoing and attached six sheets to be a true copy from the records of this office.

CERTIFICATE GRANTING AUTHORITY TO TRANSACT BUSINESS

Thereupon, Honorable J. Bryan Grimes, who was then Secretary of State, granted to said Tobacco Company authority to transact business in this State, which authority was as follows:

"I, J. Bryan Grimes, Secretary of State of the State of North Carolina, do hereby certify:

1. That the R. J. Reynolds Tobacco Company, a corporation organized under the laws of the State of New Jersey did on ———, ———, filed in my office a duly attested copy of its charter and a statement in compliance with Section 1181 of the Consolidated Statutes.

2. That said statement sets forth:

(a) That the name of the corporation is R. J. Reynolds Tobacco Company.

(b) That it is incorporated under the laws of the State of New Jersey.

(c) That the location of the principal office in this State is at Winston-Salem, County of —.

[fol. 41] (d) That the name of the agent therein and in charge thereof, upon whom process against the corporation may be served is —.

(e) That the total authorized capital stock of the corporation is —.

(f) That the amount actually issued and outstanding is —.

And I further certify that said R. J. Reynolds Tobacco Company has paid the entrance tax of 20 cents for each \$1,000.00 of the total authorized capital stock (in no case less than \$25.00) as required by the aforesaid section as amended, amounting to —, and has also paid the fee of \$5.00 for filing application for domestication, and that said corporation is authorized to transact such business in this State as is permitted by its charter and Chapter 22 of the Consolidated Statutes, entitled "Corporations," and is subject to such taxes, liabilities and restrictions as are provided by law.

In testimony whereof, I have hereunto set my hand and affixed my official seal.

Done at office in Raleigh, this the — day of — —.

J. Bryan Grimes, Secretary of State."

That thereafter the said R. J. Reynolds Tobacco Company annually paid the license tax required of foreign corporations to do business in North Carolina, accompanied by its annual report, substantially as follows:

"Annual Report from Foreign Corporation for Franchise Tax for Year 1919 to the State Tax Commission, Raleigh

In compliance with Section 82, Revenue Act 1919, the following report is made by (name of corporation:) R. J. Reynolds Tobacco Company.

Foreign Corporations

Section 4, Revenue Act * * * Nor shall any individual stockholder of any foreign corporation be required to list or pay taxes [fol. 42] on any share of its capital stock, if two-thirds in value of its entire property is situated and taxed in the State of North Carolina, or if such corporation has tangible assets within this State assessed for taxation at a value exceeding the par value of the total stock owned by citizens of this State, and the said corporation pays franchise tax on its entire issue and outstanding capital stock at the same rate as paid by domestic corporations.

Section 82, Subsection 4. Annually during the month of July, each foreign corporation for profit, doing business in the State, and

owning or using a part of its capital or plant in this State, and subject to compliance with all other provisions of law, and in addition to all other statements required by law, shall make a report in writing to the Commission in such form as the Commission may prescribe.

Subsection 5. Such report shall be signed and sworn to before an officer authorized to administer oaths, by the president, vice-president, secretary, superintendent or managing agent in this State, and forwarded to the Commission.

Subsection 6. Such report shall contain.

1. Name of Corporation: R. J. Reynolds Tobacco Co.
2. Under the laws of what State or country organized? New Jersey.
3. Location of Principal Office: Winston-Salem, N. C.
4. Name of President, Secretary, Treasurer, and Board of Directors, with postoffice address of each:

Name	Address
President..... W. N. Reynolds.....	Winston-Salem, N. C.
Secretary..... M. E. Motsinger.....	Winston-Salem, N. C.
Treasurer..... D. Rich	Winston-Salem, N. C.

Board of Directors

Name	Address
W. N. Reynolds.....	Winston-Salem, N. C.
W. R. Reynolds.....	" "
Bowman Gray	" "
C. A. Kent.....	" "
M. E. Motsinger.....	" "
D. Rich	" "
J. L. Graham.....	" "
[fol. 43] R. E. Lassater.....	Winston-Salem, N. C.
J. B. Dyer.....	" "
T. K. Kirk.....	Lexington, Ky.
Henry A. Oetjen.....	Jersey City, N. J.

5. Date of annual election of officers: First Thursday of Each April.

6. Amount of authorized capital stock: \$40,000,000.00.
7. Par value of each share: \$100.00.
8. Amount of Capital stock subscribed: \$30,000,000.00.
9. Amount of capital stock issued: \$30,000,000.00.
10. Amount of capital stock paid up: \$30,000,000.00.
11. Nature and kind of business in which corporation is engaged: Manufacturing cigarettes, plug, twist, and smoking tobacco.

12. Its place or places of business in this State: Winston-Salem, Reidsville, Mt. Airy.

13. Its place or places of business outside of this State: See list attached.

14. Name and location of its office or offices in this State: Winston-Salem.

15. Names and address of the officers or agents of the corporation in charge of its business in this State upon whom process against the corporation may be served: Officers and directors shown on first page.

16. The value of the property owned and used by the company in this State: See #23 and affidavit attached.

17. Where situated: Winston-Salem, Mt. Airy, Reidsville.

18. The value of the property owned and used by the company outside of this State: See #23 and affidavit attached.

19. Where situated: See list attached.

20. Volume of business done by the company in this State for the year ending May 31st, 1919; or other date during year on which annual reckoning is made: See No. 23.

21. Volume of business done by the company outside of this State [fol. 44] for the year ending May 31st, 1919, or other date during year on which annual reckoning is made: See No. 23.

22. Where said business is done: U. S. A., Canada and other foreign countries.

23. State whether the corporation desires to take advantage of Section 4, Revenue Act (see page 1), and have the franchise tax of forty cents on the \$1,000.00 of the entire issued and outstanding capital stock assessed against the corporation: (Yes or No.) Yes.

24. The change or changes, if any, in the above particulars, made since the last annual report: July 31st, 1918, issued and was paid for, \$5,000,000.00 capital stock.

List of names of all officers and employees resident in this State who were paid by such corporation salaries, wages or fees in excess of \$666.66 if unmarried, or \$1,000.00 if married or widow or widower with minor child or children, for eight months ending January 1st, 1919, and total amount of such compensation for said period.

Section 43 (a). Reports of Names of Officers and Employees to be Made to the State Tax Commission. That in addition to the information required by the preceding section to be reported to the State Tax Commission by domestic corporations, all corporations both domestic and foreign, doing business in this State and required by any section of the Revenue and Machinery Acts to make report to the State Tax Commission shall also be required to report to the State Tax Commission the names and places of residence of all officers and

employees of such corporations who were paid by such corporations salaries, wages or fees for the eight months ending January first, 1919, in excess of \$666.66 for unmarried person, and in excess of \$1,000.00 for married persons and widows or widowers having minor child or children and the total amount of such compensation for said period, and annually thereafter during the month of January for the preceding calendar year, the names of all officers and employees of such corporations who were paid by such corporations salaries, wages or fees in excess of \$1,000.00 for unmarried persons and \$1,500.00 [fol. 45] for married persons and widows or widowers having a minor child or children and the total amount of compensation. All such corporations shall be liable for penalties provided in section 82 of the Revenue Act for failure to make report as required by this section.

Provided, That if the person, firm, company or corporation is without knowledge that the person to whom salaries, wages, fees or commissions have been paid is unmarried or married, and is unable to ascertain such fact in each case reported, the names of such persons who receive salaries, wages, fees or commissions in excess of the minimum exemption shall be reported.

It shall be the duty of the State Tax Commission to have its Traveling Auditors make diligent investigation if all parties liable for an income tax have listed the same, and it shall also be the duty of the State Tax Commission to have investigated the reports and records of the Collectors of Internal Revenue in this State insofar as the same may be available under the Act of Congress, to the end that all parties liable for income tax in this State shall be duly charged therewith.

The State Tax Commission is forbidden to divulge or make public the information required to be reported in this section, but it shall be the duty of the State Tax Commission to furnish the information so reported to the Registers of Deeds of the several counties of the State, whose duty it shall be to compute the income tax on all such income liable for income tax within their respective counties and charge the same upon the tax books.

Name	Place of residence in this State	Salaries, wages or fees paid in excess of exemption	Total amount of compensa- tion for said year
.....
.....

James Sloan, Auditor of the above corporation, this day personally appeared before me, and, after being duly sworn to do and perform the same with fidelity and according to the best of his knowledge and [fol. 46] belief, doth state and that the questions herein contained have been answered fully and correctly, except those answered upon information and belief, and as to those he believes them to be true and correct.

Witness my hand and seal this 28th day of July, 1919.

P. C. Edgerton, Notary Public. (Seal.)

(Endorsed:) Annual Report from Foreign Corporation (Insert name and address of corporation) R. J. Reynolds Tobacco Co., Win-

ston-Salem, N. C., 1919. Proportion of authorized capital stock represented by property owned and used and business transacted in this State: \$30,000,000.00. Show name of officer making this report: ———. (Address:) ———. Return to State Tax Commission, Raleigh, N. C.

That two-thirds in value of the property of said Tobacco Company is located in or near the City of Winston-Salem in this State. That since the date of the application of said R. J. Reynolds Tobacco Company, for permission to do business in this State, it has regularly paid the license and franchise taxes required of such corporations by this State and is still doing business in this State as a corporation of the State of New Jersey. None of the stock of the said tobacco company, owned by the said George Briggs, deceased, and bequeathed by him, was in the State of North Carolina at the time of his death and never had been during the time it was owned by the said Briggs.

The defendant, A. D. Watts, Commissioner of Revenue of the State of North Carolina, levied an inheritance tax upon the transfer of 66-2/3% of the total value of the stock in the R. J. Reynolds Tobacco Company, to-wit, \$77,089.67, amounting to, at the time of the payment of the same hereinafter set out, with interest, \$2,658.85. From [fol. 47] said assessment plaintiff duly appealed to the Superior Court of Wake County.

Plaintiff contended that the estate of the late George Briggs was not liable for the payment of any inheritance tax to this State, because neither the said George Briggs, nor any of his devisees, was or ever had been, citizens of this State. None of the stock owned by the said estate had ever been subject to the taxation, and the corporation which issued said stock was not, nor had it ever been, a corporation of this State, but was a corporation of the State of New Jersey, doing business as a foreign corporation in North Carolina under and by virtue of a license issued to it as a foreign corporation by said State.

The said Commissioner of Revenue insisted upon the payment of the tax and the Tobacco Company refused to transfer the stock to plaintiff until the tax was paid. Under these circumstances, and in order to secure the transfer of this stock to plaintiff, the said amount of \$2,658.85 was paid by plaintiff as executor of George Briggs, deceased, to A. D. Watts, Commissioner of Revenue, but under protest and with the assertion that the same was not due and ought not to be paid, and that same was paid under compulsion for the purpose of securing the transfer of stock to plaintiff and that plaintiff would bring suit to recover the money paid under protest and compulsion. Plaintiff duly demanded return of the money so paid, which demand was refused, and then this action was instituted within the time prescribed by law.

The only authority the Commissioner of Revenue had to levy assessment or impose a tax upon the shares of stock in said Tobacco Company, owned by the late George Briggs, is contained in the Revenue Act of 1919, being Chapter 90, Public Laws, Section 6 and sub-section 7 thereof, which, so far as is material to this case is as follows:

Sec. 6. Rate of Inheritance Tax. From and after the passage of this act all real and personal property of whatever kind and nature [fol. 48] which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State, whether the person or persons dying seized thereof be domiciled within or out of the State (or if the decedent was not a resident of this State at the time of his death, such property or any part thereof within this State,) or any interest therein or income therefrom which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor, bargainor, donor or assignor, or intended to take effect in possession or enjoyment after such death, to any person or persons or to bodies corporate or politic, in trust or otherwise, or by reason whereof any person or body corporate or politic shall become beneficially entitled in possession or expectancy to any property or the income thereof, shall be and hereby is made subject to a tax for the benefit of the State. * * *

"Seventh. The words 'such property or any part thereof or interest therein within this State' shall include in its meaning bonds and shares of stock in any incorporated company, incorporated in any other State or country, when such incorporated company is the owner of property in this State, and if 50 per cent or more of its property is located in this State, and when bonds or shares of stock in any such company not incorporated in this state, and owning property in this State, are transferred by inheritance, the valuation upon which the tax shall be computed shall be the proportion of the total value of such bonds or shares which the property owned by such company in this State bears to the total property owned by such company, and the exemptions allowed shall be the proportion of exemption allowed by this act, as related to the total value of the property of the decedent.

"If the incorporated company not incorporated in this State and owning property in this state be a railroad company, the proportion upon which the tax shall be paid shall be the proportion which the miles of road of such company in this State bear to the total miles [fol. 49] of road of such company.

"Any incorporated company not incorporated in this State and owning property in this State, which shall transfer on its books the bonds or shares of stock of any decedent holder of shares of stock in such company exceeding in par value \$500.00, before the inheritance tax, if any, has been paid, shall become liable for the payment of the said tax, and any property held by such company in this State shall be subject to execution to satisfy the same. A receipt or waiver signed by the State Tax Commission of North Carolina shall be full protection for any such company in the transfer of any such stocks or bonds.

"The State Tax Commission shall prepare and furnish upon application blank forms covering such information as may be necessary to determine the amount of inheritance tax due the State of North Carolina on the transfer of any such bonds or stock; it shall determine the value of such bonds or stock, and shall have full authority

to do all things necessary to make full and final settlement of all such inheritance taxes due or to become due, and shall make prompt return to the State Treasurer of all such taxes collected.

"The State Tax Commission shall have authority, under penalties provided in Section 82 of this Act, to require that the report necessary to a proper enforcement of this Act be made by any such incorporated company owning property in this State."

Plaintiff contends that the said Act is unconstitutional in so far as it attempts to levy or impose an inheritance succession tax upon the stock in said Tobacco Company owned by the estate of said George Briggs, deceased, because neither the said George Briggs, deceased, nor any of the devisees or beneficiaries in his will have ever been citizens or residents of or domiciled within the State of North Carolina, and because said Tobacco Company is not a corporation of North Carolina, but it now and always has been, a corporation of the State of New Jersey and that the stock itself has never been physically within the State of North Carolina.

Plaintiff further says that in so far as the quoted statute attempts to impose an inheritance, succession or transfer tax upon the said stock belonging to the estate of George Briggs in the said Tobacco Company, the same is unconstitutional, null and void, and its enforcement would be a violation both of the Constitution of the United States and the Constitution of the State of North Carolina, in the particulars set out in plaintiff's protest to the former Commissioner of Revenue, and in the complaint in this action.

That the plaintiff has set out particularly in its complaint the manner and respects in which it contends that the said statute and any attempted enforcement thereof in so far as it relates to the stock owned by the said George Briggs in the said Tobacco Company is and would be violative of plaintiff's right guaranteed to it by the Constitution of the United States and violative of the Constitution of the State of North Carolina. As the plaintiff's contentions as to the constitutionality of the Act are fully set out in the complaint the same need not be repeated here, but this agreement shall be treated as if the said portions of plaintiff's complaint were repeated herein word for word.

Since the institution of this action the defendant, A. D. Watts, has resigned his office as Commissioner of Revenue for this State and Hon. R. A. Doughton has been appointed by the Governor, confirmed by the Senate, and has duly qualified as Commissioner of Revenue and is now engaged in the performance of the duties of said office. He has consented to be made party defendant herein and to be substituted as defendant instead of A. D. Watts, late Commissioner of Revenue for the State of North Carolina, an order substituting the said R. A. Doughton for the said A. D. Watts has been duly entered in this cause.

If, upon consideration of the pleadings and of the agreement of [fol. 51] facts the Court shall be of the opinion that it is not lawful or constitutional for the General Assembly of North Carolina to impose a succession, inheritance or transfer tax upon the stock in said

Tobacco Company owned by the late George Briggs, or that the tax levied upon the transfer of said stock is not in accordance with law, it is agreed that judgment may be entered against the defendant for \$2,658.85, with interest from and after the 31st day of May, 1922, until paid, at the rate of six per centum per annum. If, on the other hand, the Court is of the opinion that the said Act of the General Assembly is constitutional and that the levy of the tax upon the transfer of said stock is lawful, then judgment shall be rendered that defendant go without day and recover his costs in this behalf incurred.

By consent, the appeal from the assessment of tax made by the Commissioner of Revenue now pending in this Court, and this action to recover the money paid as taxes under protest and with the demand for its return, and notice that suit would be brought, are hereby consolidated; and all rights of either of the parties hereto in either or both of said actions, are hereby preserved to be adjusted and administered in the action so consolidated; all technicalities being mutually waived.

Respectfully submitted, Tillinghast & Collins, Pou, Bailey & Pou, Attorneys for Plaintiff. Frank Nash, Asst. Atty. Gen., Attorney for Defendant.

IN SUPERIOR COURT OF WAKE COUNTY

JUDGMENT

This cause coming on to be heard upon the pleadings and statement of facts agreed upon by all parties, and a jury trial being waived, and the same being heard by the Court after argument of counsel:

And it appearing to the Court that the action was brought for the purpose of recovering the amount paid under protest to the Commissioner of Revenue, according to an assessment made by said Commissioner of Revenue, of the inheritance or succession tax upon the [fol. 52] devolution or transfer of certain shares of the capital stock of R. J. Reynolds Tobacco Company, a corporation of New Jersey owned by the late George Briggs, a citizen and resident of the State of Rhode Island, who died domiciled therein during the year 1919;

And it appearing to the Court that the authority for the assessment and imposition of the inheritance or succession tax upon the transfer or devolution of said stock belonging to said George Briggs, deceased, was Chapter 90, Public Laws 1919, Section 6, subsection 7 thereof, and that the said Commissioner of Revenue assessed and imposed such tax by reason of the fact that two-thirds of the total value of the property of said R. J. Reynolds Tobacco Company was situated in the State of North Carolina;

And it appearing to the Court that the plaintiff paid the tax so assessed upon the devolution of said shares of capital stock under

protest, and because the said R. J. Reynolds Tobacco Company had been notified by the Commissioner of Revenue that it could not lawfully transfer any of the shares of the capital stock of said R. J. Reynolds Tobacco Company, unless the succession or inheritance tax upon the transfer or devolution of said stock should have been paid; and that plaintiff could not secure a transfer of the said shares of capital stock without paying the tax as assessed by the Commissioner of Revenue; and that for the sole purpose of securing the transfer of said stock it paid the tax demanded by the Commissioner of Revenue, but under protest; and that thereafter it demanded return of the tax so paid, and within the time prescribed by law brought this action to recover the same;

And it being agreed by the parties hereto that the decision of this action depends upon the legality and constitutionality of the said act of the General Assembly of 1919, and the assessment made by the Commissioner of Revenue under the terms of said Act;

And it being agreed that if the Court should be of the opinion that the said Act of the General Assembly, and the effort of the Commissioner of Revenue to assess an inheritance or succession tax upon [fol. 53] the transfer of the shares of capital stock belonging to the late George Briggs as aforesaid, were in contravention either of the First Section of the 14th Amendment to the Constitution of the United States, or in contravention of Article 1, section 17 of the Constitution of North Carolina, both of which provisions were expressly set up by plaintiff and relied upon as grounds for this action and as defenses against the assessment or imposition of an inheritance or succession tax upon the transfer or devolution of the shares of stock as aforesaid, then judgment should be rendered in favor of plaintiff and against defendant for the sum of \$2,658.85, being the amount paid by plaintiff under protest upon the transfer of said stock as aforesaid, with interest from the date of payment, and the costs of this action;

And it being further agreed that if the Court should be of the opinion that the said Act of the General Assembly, and the act of the Commissioner of Revenue in assessing and enforcing the inheritance or succession tax upon the devolution or transfer of the shares of capital stock of R. J. Reynolds Tobacco Company, belonging to the late George Briggs, was not in violation of said sections of the Constitutions of the United States and of North Carolina; but was a legal and valid exercise of the taxing powers of this State, then judgment should be rendered that plaintiff take nothing by this suit, and that defendant recover of plaintiff, and the surety on its prosecution bond, the costs of this action to be taxed by the Clerk of this Court;

And it further appearing that since the institution of this action, and the appeal from the assessment, the said action and appeal have by consent been consolidated, and are both heard and determined in this action; and that R. A. Doughton has, by consent, been substituted as defendant in place of A. D. Watts, resigned;

And the Court, after the hearing of argument and consideration of the case, being of the opinion that the Act of the General Assembly

of 1919 was a valid exercise of the taxing powers of this State; and that it was not in contravention of either the First Section of the 14th [fol. 54] Amendment to the Constitution of the United States, nor of Article 1, section 17, of the Constitution of North Carolina, insofar as it was attempted by said Act and by the assessment of the Commissioner of Revenue thereunder to impose an inheritance or succession tax upon the transfer or devolution of the shares of the capital stock of R. J. Reynolds Tobacco Company owned by the late George Briggs; but that the said Act of the General Assembly, and the proceedings of the Commissioner of Revenue thereunder in assessing and imposing the said tax upon the said shares of stock, were in all respects valid exercises of the taxing powers of this State;

Now, therefore, on motion of Hon. Frank Nash, Assistant Attorney General, it is ordered, decreed and adjudged by the Court that plaintiff, Rhode Island Hospital Trust Company, Executor of George Briggs, deceased, take nothing by this suit; and that defendant, R. A. Doughton, Commissioner of Revenue, recover of said plaintiff, and the surety on its prosecution bond, the costs of this action to be taxed by the Clerk of this Court;

It is further adjudged that the assessment by the former Commissioner of Revenue of the succession or inheritance tax upon the shares of stock in R. J. Reynolds Tobacco Company, owned by the late George Briggs, be, and the same is, in all respects, approved and confirmed.

This is the final judgment in this action.

E. H. Cranmer, Judge Presiding.

IN SUPERIOR COURT OF WAKE COUNTY

STIPULATION RE TRANSCRIPT OF RECORD

To the foregoing judgment plaintiff objects and excepts in open court, and craves an appeal to the Supreme Court. The said appeal is duly allowed in open Court, and defendant accepts notice of said appeal, and waives any other and further notice. By consent it is agreed that the summons, the pleadings, the agreed statement of facts and this judgment shall constitute the case on appeal for the Supreme Court; and plaintiff is allowed to file with the Clerk of this Court such assignments of errors as it may desire. Appeal bond fixed at \$50.00.

E. H. Cranmer, Judge Presiding.

[fol. 55] We, attorneys for plaintiff and defendant respectively, agree that the Clerk shall make out the transcript for the Supreme Court in accordance with the foregoing statement, and that the same be docketed in the Supreme Court as early as practicable. All notices, technicalities and formalities waived.

Pou, Bailey & Pou, Attys. for plaintiff, Appellant. Frank Nash, Asst. Atty. General, Atty. for Defendant.

IN SUPERIOR COURT OF WAKE COUNTY

ASSIGNMENTS OF ERROR

Plaintiff, Rhode Island Hospital Trust Company, Executor of George Briggs, deceased, excepts to the judgment rendered by His Honor, Judge E. H. Crammer, and makes to the said judgment the following assignments of error:

1. That the said judgment is erroneous in that it holds that section 6, subsection 7, of Chapter 90, Public Laws of North Carolina, 1919, imposes an inheritance or succession tax upon the transfer or devolution of shares of stock in R. J. Reynolds Tobacco Company, a corporation of New Jersey, owned by the late George Briggs, a citizen and resident of Rhode Island, and who died domiciled in said State.

2. That the said judgment is erroneous in that it holds that it was competent and constitutional for the General Assembly of North Carolina to enact a statute which would impose an inheritance or succession tax upon the devolution or transfer of the said shares of stock.

3. That as construed by the Court as imposing a succession or inheritance tax upon the devolution or transfer of shares of stock as aforesaid, the said subsection 7 of section 6 of Chapter 90, Public Laws of 1919 is unconstitutional, null and void, in that it is a violation of the First section of the 14th Amendment to the Constitution of the United States. That it is violative of said First Section of the 14th Amendment to the Constitution of the United States, because as construed by the Court it would be the taking of the property of plaintiff without due process of law, and would be a taking of plaintiff's property for public purposes without compensation. Plaintiff pleaded and expressly set up and relied upon the said First Section of the 14th Amendment to the Constitution of the United States, as a bar to such construction and operation of the statute, and as a protection against and a defense to the imposition of such unlawful tax.

4. That the said statute as construed by the Court violates Article 1, Section 17, of the Constitution of North Carolina, and plaintiff has set up and relied upon said Article 1, section 17, of the Constitution of North Carolina, as a defense to the imposition of the said illegal tax.

5. That said judgment is erroneous in that it adjudges that it is competent and lawful for the General Assembly of this State to enact a statute which will impose a tax upon the devolution or transfer of shares of stock in R. J. Reynolds Tobacco Company, a corporation of New Jersey, owned by George Briggs, lately a citizen and resident of the State of Rhode Island, and who resided and was domiciled in said State at the time of his death, and who never had been a citizen or resident of the State of North Carolina, and when the transfer of the shares of stock formerly owned by the said

George Briggs was to be effected at the transfer office of R. J. Reynolds Tobacco Company in the City of New York.

6. That the said judgment is erroneous because it holds valid and seeks to enforce the imposition and collection of an inheritance or succession tax upon the devolution or transfer of shares of stock in the R. J. Reynolds Tobacco Company, a corporation of New Jersey, owned by the late Geo. Briggs, a citizen and resident of the State of Rhode Island. That the said George Briggs never was or had been a citizen or resident of North Carolina, and the said R. J. Reynolds Tobacco Company never had been a corporation organized by the State of North Carolina, and never maintained its principal office, nor its office for the transfer of stock, in this State; and that no part of the proceedings necessary to administer the estate of the said [fol. 57] George Briggs, nor to transfer stock in said R. J. Reynolds Tobacco Company belonging to said George Briggs, were performed or were required to be performed within the State of North Carolina; but that all of said acts were performed entirely outside of and beyond the jurisdiction of said State of North Carolina.

7. That the said judgment is erroneous because it fails to adjudge that plaintiff was not subject to the inheritance or succession tax to the State of North Carolina upon having the shares of stock in said Tobacco Company transferred from the name of George Briggs to plaintiff in accordance with the will. Said judgment should have decreed that plaintiff was not liable for any such tax to the State of North Carolina, and was entitled to have the said stock transferred without the payment of tax to said State; and that when plaintiff was required to pay under protest the inheritance or succession tax upon the transfer or devolution of said stock, the same was contrary to law, deprived plaintiff of its rights, and was a taking of plaintiff's property without due process of law, contrary to law, and was a denial to plaintiff of the equal protection of the law; and in violation of the First Section of the 14th Amendment to the Constitution of the United States, and also in violation of Article 1, Section 17, of the Constitution of North Carolina.

8. That said judgment was erroneous in that it failed to adjudge that plaintiff was entitled to recover of defendant the sum of \$2,-658.85, paid under protest and under necessity, upon the transfer of the shares of the capital stock of R. J. Reynolds Tobacco Company, formerly belonging to George Briggs, to plaintiff.

9. Plaintiff excepts to each and every part and clause of said judgment.

Pou, Bailey & Pou, Attys. for Plaintiff, Appellant.

(Transcript certified by Clerk Superior Court Wake County, 15 May, 1923.)

[fol. 58] IN SUPREME COURT OF NORTH CAROLINA

DOCKET ENTRIES

Appeal docketed 16 May 1923; case argued 3 October 1923; opinion 27 February 1924 by Stacy, J., as follows:

[fol. 59] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

Appeal by Plaintiff from Cranmer, J., at March Term, 1923, of Wake

Civil action to recover the amount of an inheritance tax, or transfer tax, paid by plaintiff under protest and sought to be regained by this suit.

From a judgment as of non-suit, or one denying recovery, the plaintiff appeals.

Colin McRae Makepeace, Tillinghast & Collins, and Pou, Bailey & Pou, for plaintiff.

Attorney-General Manning and Assistant Attorney-General Nash for defendant.

OPINION

STACY, J.:

The Rhode Island Hospital Trust Company of Providence, Rhode Island, executor under the will of George Briggs, deceased, brings this suit to recover of the defendant, Commissioner of Revenue of North Carolina, the sum of \$2,658.85, being the amount exacted by the defendant and paid by the plaintiff, involuntarily and under protest, by way of an inheritance tax, or a transfer tax, on shares of stock owned by decedent at the time of his death, in the R. J. Reynolds Tobacco Company, a corporation chartered under the laws of the State of New Jersey, and domesticated in the State of North Carolina under C. S. 1181, with its principal place of business in this State and with two-thirds of the total value of its property located herein. The said corporation maintains a transfer office in the City of New York, and the paper certificates representing the shares of stock owned by the decedent at the time of his death have never been in this State. George Briggs was not a resident of North Carolina, but during his lifetime, or at least the latter part thereof, he resided [fol. 60] in the State of Rhode Island and was a citizen of that State at the time of his death, 29 October, 1919. None of the beneficiaries under his will live in North Carolina. The question, therefore, directly presented is whether the Legislature of this State can impose an inheritance tax, or a transfer tax, upon the right of non-resident legatees or distributees to take by will, or to receive under the intestate laws of another state, from a non-resident testator or

intestate, shares of stock in the R. J. Reynolds Tobacco Company, and to require the payment of such tax as a condition precedent to the right to have said stock transferred on the books of the corporation. A satisfactory answer to this question would seem to necessitate an examination into the basic character of the tax imposed.

But before entering upon an investigation of this nature, we observe a suggestion by the plaintiff that the statute in question, Chap. 90, Public Laws, 1919, now C. S. 7772, et seq., does not warrant the interpretation placed upon it by the defendant and the State Tax Commission. This position, on the argument, was not made the subject of serious debate. Indeed, we think there is but little room for construction. The statute undertakes to impose an inheritance tax upon the transfer of all real and personal property of every kind and description and "such property or any part thereof or interest therein within this State", which shall pass by will, or by operation of law, from a testator to his legatees or devisees, or from an intestate to his heirs or distributees; and sec. 6, in part, provides:

"The words, 'such property or any part thereof or interest therein within this State', shall include in its meaning bonds and shares of stock in any incorporated company, incorporated in any other state or country, when such incorporated company is the owner of property in this State, and if 50 per cent or more of its property is located in this State, and when bonds or shares of stock in any such company not incorporated in this State, and owning property in this State, are transferred by inheritance, the valuation upon which the tax shall be computed shall be the proportion of the total value of such bonds or shares which the property owned by such company in this State bears to the total property owned by such company, and the exemption allowed shall be the proportion of exemption allowed by this act, as related to the total value of the property of the decedent."

It is clear, we think, from the language used, that the Legislature intended to levy the tax imposed and which is sought to be recovered in this suit.

Plaintiff's next position is that, if the law is to be construed so as to authorize an imposition of the tax in question, then the statute is unconstitutional, both under Art. I, Sec. 17 of the State Constitution and also under the Fourteenth Amendment to the Constitution of the United States. This brings us to a consideration of the nature of the tax in dispute.

There has been and still is some slight difference of opinion among courts as to the exact nature of an inheritance tax. It is agreed, however, that such a tax is levied, not upon the property itself, but upon its transfer, change of ownership, or devolution. The principle difference arises over the question as to whether the tax is laid on the privilege of transmitting property or on the privilege of receiving the property so transmitted. *Prentiss v. Eisner*, 267 Fed., 16. The former is sometimes called a transmission tax or legacy tax, while the latter is usually styled a succession tax. But in each instance, it is

generally conceded that the tribute or contribution exacted before the property can pass from the dead to the living, or from the testator to the objects of his bounty, has some of the characteristics of an excise or custom duty. It is a ransom or toll levied upon the right to transmit or upon the right to receive property, the transmission or receipt of which is occasioned by death. In *Re Inman*, 199 Pac. (Or.), 615, 16 A. L. R., 675.

In this State, the particular tax now in question is imposed upon the right of succession.

"We do not regard the tax in question as a tax on property, but rather as a tax imposed on the succession; on the right of a legatee to take under the will, or of a collateral distribution in the case of intestacy * * * Neither can it be held a tax on property merely because the amount of the tax is measured by the value of the property." Rodman, J., in *Pullen v. Comrs.*, 66 N. C., p. 363. [fol. 62] "The theory on which taxation of this kind on the devolution of estates is based and its legality upheld is clearly established and is founded upon two principles: (1) A succession tax is a tax on the right of succession to property, and not on the property itself; (2) The right to take property by devise or decent is not one of the natural rights of man, but is the creature of the law." Brown, J., in *In re. Morris Estate*, 138 N. C., p. 262. See, also *Corp. Com. v. Dunn*, 174 N. C., 679; *Norris v. Duffy*, 168 N. C., 321; *In Re Inheritance Tax*, 168 N. C., 356; *S. v. Bridgers*, 161 N. C., 247.

It clearly appears, we think, from the language of the statute under which the present tax is imposed, that the Legislature intended to levy an inheritance tax, with certain exceptions, on the succession or devolution of all real and personal property, of every kind and description within the jurisdiction of the State, and upon any interest therein, whether owned by a resident or non-resident at the time of his death.

It is universally conceded that a state may levy an inheritance tax on the transfer by will or devolution of all property within the power of its reach, whether such property be real or personal, tangible or intangible, corporeal or incorporeal. *Hooper v. Shaw*, 176 Mass., 190; *Morrow v. Durant*, 118 N. W. (Ia.), 781; *Neilson v. Russell*, 69 Atl. (N. J.), 476; *Plummer v. Coler*, 178 U. S., 115; Note 127 A. S. R., 1059; 26 R. C. L., 208. Construing the succession-tax law of Massachusetts, Knowlton, C. J., in *Kinney v. Stevens*, 207 Mass., 368, said:

"This language indicates an intention on the part of the legislature to tax all property that it has the power to tax. The statute is as broad as the jurisdiction of the commonwealth."

And the same may be said of the North Carolina statute.

It is equally well established that a state tax on property must be limited to property within the territorial jurisdiction of the state.

"Property situated without that jurisdiction is beyond the State's taxing power, and the exaction of a tax upon it is in violation of the

Fourteenth Amendment to the Constitution." *Metropolitan Life Ins. Co. v. New Orleans*, 205 U. S., 395; *Wallace v. Hines*, 253 U. S., 66; *Western Union Tel. Co. v. Kansas*, 116 U. S., 1; *Tappan v. Merchants Nat. Bank*, 19 Wall., 490.

[fol. 63] But the tax now under consideration is not a direct tax on property. It is a tax imposed upon the transfer, transaction, or right of succession, and is merely measured in amount by the value of the property transferred. *S. v. Bullen*, 143 Wis., 512; *Magonn v. Bank*, 170 U. S., 298; *U. S. v. Perkins*, 163 U. S., 625; *Nettleton's Appeal*, 76 Conn., 242; *Thompson v. Kidder*, 74 N. H. 92; *Minot v. Winthrop*, 162 Mass., 118; *S. v. Hamlin*, 86 Me., 503. It "has ever been treated as a duty or excise, because of the particular occasion which gives rise to its levy." *New York Trust Co. v. Eisner*, 256 U. S., 345.

"As to residents, the transfer tax is on the succession, and is imposed on the right of succession; but, as to non-residents, it is a tax on the transfer of property within the jurisdiction of the court." *Patterson, J.*, in *In Re Bishop*, 81 N. Y. Sup., 474.

Undoubtedly the State has power to levy an inheritance tax in respect to all property upon which it has power to impose an ordinary property tax, and, in addition thereto, it has the power to impose a succession tax in respect to certain property upon which it cannot levy an ordinary property tax. *State ex rel. Graff v. Probate Court*, 128 Minn., 371. For example, no state, in the exercise of its general power of taxation, can levy a direct tax on obligations of the United States, and yet a legacy of United States bonds is not exempted from the inheritance-tax laws of a state, because such tax is not laid on the bonds themselves, but on the right to acquire them by will, or by devolution in case of intestacy. *Plummer v. Coler*, 178 U. S., 115. So, also, a state may tax the inheritance of its own bonds, or bonds of municipal corporations, though it expressly provided, when the bonds were issued, that they should be exempt from taxation. *Orr v. Gilman*, 183 U. S., 278.

The tax in question being upon the right of succession and not upon the property transferred or received, it is not subject to the constitutional limitations with respect to uniformity and equality, nor is it a "direct tax" within the meaning of the Constitution of the United States. *Scholey v. Rew*, 23 Wall., 331; 26 R. C. L., 196.

[fol. 64] "Whether an inheritance tax shall be laid or not, and the rate thereof, and the exemptions allowed, are matters which rest in the power and discretion of the law-making department." *Clark, C. J.*, in *Corp. Com. v. Dunn*, 174 N. C., p. 681.

"A succession tax is not a property tax upon the privilege of receiving property by intestate or testate succession. It is in the strict sense an excise tax. It is like a transfer or other excise tax. It need not be proportional under our Constitution. It is not subject to the restrictions and limitations which attach to property taxes under the Federal Constitution. (Citing authorities.) Excise or succession

taxes may be measured in part at least by the value of property which is exempt from taxation, such as government bonds, merchandise in bond, and other like tax exempt property." Rugg, C. J., in *Welch v. Treasurer*, 223 Mass., 87.

The personal property of a decedent, whatever its character, and wherever located, is subject to an inheritance tax in the state of which its owner was a resident at the time of his death. *Bullen v. Wisconsin*, 240 U. S., 625. This position is upheld upon the principle that the situs of personal property, for the purpose of taxation, is said to be in that state where the owner resides and has his domicile. *Mobilia sequuntur personam*. *Gallup's Appeal*, 76 Conn., 617; *In Re Swift*, 137 N. Y., 77; *People v. Union Trust Co.*, 255 Ill., 168; *McCurdy v. McCurdy*, 197 Mass., 248; *In re Hartman*, 70 N. J. Eq., 664.

In *Frothingham v. Shaw*, 175 Mass., 59, a resident of Massachusetts died owning stocks and bonds of foreign corporations and money in bank in the State of New York. An inheritance tax imposed by the domiciliary state on the personal property in New York was assailed upon the ground that this personal property was not "property within the jurisdiction of the commonwealth of Massachusetts." And further that the succession as to this property in New York took place under the laws of that State and not under the laws of Massachusetts. Speaking to these two contentions, the Court said:

1. "In arriving at the amount of the tax the property within the jurisdiction of the commonwealth is considered, and we see no reason [fol. 65] for supposing that the legislature intended to depart from the principle heretofore adopted, which regards personal property for the purposes of taxation as having a situs at the domicile of its owner."

2. "The petitioners further contend that the succession took place by virtue of the law of New York. But it is settled that the succession to movable property is governed by the law of the owner's domicile at the time of his death. This, it has been often said, is the universal rule, and applies to movables wherever situated. * * * If there are movables in a foreign country, the law of the domicile is given an extraterritorial effect by the courts of that country, and in a just and proper sense the succession is said to take place by force of and to be governed by the law of the domicile. Accordingly it has been held that legacy and succession duties as such were payable at the place of domicile in respect to movable property wherever situated, because in such cases the succession or legacy took effect by virtue of the law of domicile."

See, also, in *Re Helena*, 236, Pa., 213, as reported in 46 L. R. A. (N. S.), 1167, where a wealth of information on the subject will be found in the valuable and exhaustive note compiled by the annotator.

Among the classes of personal property, the succession to which it has been held may be taxed at the domicile of the owner, are shares of

stock in foreign corporations. *In re Hodges*, 170 Cal., 492; *In re Bullen*, 143 Wis., 512; *Hawley v. Malden*, 232 U. S., 1.

On the other hand, the state creating a corporation has the power to impose an inheritance tax upon the transfer by will or devolution of the stock of such corporation, held by a non-resident at the time of his death; and this by virtue of the authority of the chartering state to determine the basis of organization and the liability of all of its shareholders. *Corry v. Baltimore*, 196 U. S., 466; *Moody v. Shaw*, 173 Mass., 205; *In Re Culver*, 145 Iowa, 1; *People v. Griffith*, 245 Ill., 532; *Dixon v. Russell*, 78 N. J. L., 296; *In Re Bronson*, 150 N. Y., 1; *In Re Whiting*, 150 N. Y., 27; 26 R. C. L., 216. Speaking to this question in *Greves v. Shaw*, 173 Mass., 205, Knowlton, J. said:

[fol. 66] "Such a corporation, being in a sense a citizen of this State, and having an abiding place here akin to the domicile of a natural person, is subject to the jurisdiction of the Commonwealth, and is in fact with the Commonwealth. The stockholders are the proprietors of the corporation, which is itself the proprietor of the property owned and used for the ultimate benefit of the stockholders. While the corporation has a full and complete legal title to the corporate property, its ownership is in a sense fiduciary; for on winding up its affairs the surplus, after the payment of debts, must be divided among the stockholders," citing *Fisher v. Essex Bank*, 5 Gray, 373-377; *Field v. Pierce*, 102 Mass., 253; *Graham v. La Cross & Milwaukee R. R.*, 102 U. S., 148; *Hollins v. Brierfield Coal & Iron Co.*, 150 U. S., 371.

Thus it is seen that under the fiction of *mobilia sequuntur personam*, the universal succession may be taxed in one state—the domiciliary state—while according to the fact of power the singular succession may be taxed in another. *Knowlton v. Moore*, 178 U. S., 53; *Coe v. Errol*, 116 U. S., 517. As said in *Hartman's Case*, 70 N. J. Eq., p. 667:

"The great weight of authority favors the principle adopted by the New York court of appeals, holding that the tax imposed is on the right of succession under a will, or by devolution in case of intestacy; and that as to personal property, its situs, for the purpose of a legacy or succession tax, is the domicile of the decedent, and the right to its imposition is not affected by the statute of a foreign state, which subjects to similar taxation such portion of the personal estate of any nonresident testator or intestate as he may take and leave there for safe keeping, or until it should suit his convenience to carry it away."

An imadverting upon this situation in *Blackstone v. Miller*, 188 U. S., 189, Mr. Justice Holmes remarked:

"No one doubts that succession to a tangible chattel may be taxed wherever the property is found, and none the less that the law of the situs accepts its rules of succession from the law of the domicile, or that by the law of the domicile the chattel is part of a universitas and is

taken into account again in the succession tax there. (Citing authorities.)

[fol. 67] "No doubt this power on the part of two states to tax on different and more or less inconsistent principles leads to some hardship. It may be regretted, also, that one and the same state should be seen taxing on the one hand according to the fact of power, and on the other, at the same time, according to the fiction that, in succession after death, *mobilia sequuntur personam* and domicile governs the hole. But these inconsistencies infringe no rule of constitutional law."

Again, in *Kidd v. Alabama*, 188 U. S., 730, the same learned Justice took occasion to say:

"No doubt it would be a great advantage to the country and to the individual states if principles of taxation could be agreed upon which did not conflict with each other, and a common scheme could be adopted by which taxation of substantially the same property in two jurisdictions could be avoided."

Every presumption is indulged in favor of the validity, or constitutionality, of an act of the law-making body, and, hence, the courts do not hesitate to disregard the maxim *mobilia sequuntur personam*, where fiction runs counter to fact, or to resort to it, in order to uphold a statute. And though this may lead inevitably to double taxation, it apparently violates no constitutional provision. *Mann v. Carter*, 74 N. H., 345, 15 L. R. A. (N. S.), 150; *In Re Hodges*, 170 Cal., 492. In the case of *In re Whiting*, 150 N. Y., 27, Vann, J., in construing a succession-tax statute, and speaking for the Court, said:

"Thus the legislature intended, as I think, to repeal the maxim *mobilia personam sequuntur*, so far as it was an obstacle, and to leave it unchanged, so far as it was an aid, to the imposition of a transfer tax upon all property in any respect subject to the laws of this state."

"For certain purposes the maxim of the common law was '*mobilia sequuntur personam*,' but that maxim was never of universal application and seldom interfered with the right of taxation." Mr. Justice Brewer in *Adams Express Co. v. Auditor*, 166 U. S., 185.

Under the New York statute, prior to the amendment of 1911, bonds of a foreign corporation, as well as bonds and certificates of stock of domestic corporations, when deposited in a safe-deposit vault within that State, and owned by a non-resident, were held to be [fol. 68] "property within the State" and subject to an inheritance tax, although, so far as appears, they were present merely for safe-keeping. *In re Whiting*, *supra*; 26 R. C. L., 214. See, also, *Wheeler v. Sohmer*, 233 U. S., 434.

"It is well settled that bank bills and municipal bonds are in such a concrete tangible form that they are subject to taxation where found, irrespective of the domicile of the owner. * * * Notes and mortgages are of the same nature; * * * we see no reason

why a state may not declare that, if found within its limits, they shall be subject to taxation." Mr. Justice Brewer in *New Orleans v. Stempel*, 175 U. S., 309.

"Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more than archaic conditions," says Mr. Justice Holmes in *Blackstone v. Miller*, supra, a case in which the question presented was whether the State of New York had the right to tax a transfer by will of personal property in that State owned by a testator who had died domiciled in Illinois and where the whole estate, including the property in New York, had been taxed in the domiciliary State of Illinois. The New York statute was upheld and the tax imposed thereunder sustained.

The common-law rule that personal property follows the person (hence its name) and has its situs at the domicile of the owner, is a legal fiction which must give way, in matters of taxation, to the real facts of the case. *Green v. Van Buskirk*, 7 Wall., 139; *St. Louis v. Wiggins Ferry Co.*, 11 Wall., 423. It has been doubted by some as to whether this rule ever had any just application to shares of stock in incorporated companies, which, for most purposes, must be controlled by the *lex loci* of the corporation. Story on *Conflict of Laws*, 7th Ed., Secs. 364, 383, and authorities cited; *Kidd v. Alabama*, supra.

"And in states bound together by a constitution and subject to the Fourteenth Amendment, great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact." *McDonald v. Mabce*, 243 U. S., 90.

A certificate of stock is simply a written acknowledgment by a corporation of the interest of the holder in its property and franchises. [fol. 69] It has no value, except that derived from the company issuing it; and its legal status is in the nature of a chose in action. The value of all the property owned by a corporation, of whatever kind, including its franchise, is the true and fair measure of the value of all of its stock. When it is said that a person owns a certain number of shares of stock in a corporation, it is meant that such person has a right to participate in the profits of the corporation, and in its property on dissolution, after payment of its debts, in the proportion that the number of his shares bears to the whole capital stock. *Clark on Corporations*, Chap. 10; *R. R. v. Comrs.*, 87 N. C., 426; *Redmond v. Comrs.*, 87 N. C., 122.

That the stock of a corporation has no intrinsic value separate and apart from the property of the corporation is clearly shown from what is said in *Gibbons v. Mahon*, 136 U. S., 549, and *Towne v. Eisner*, 245 U. S., 418, relative to a stock dividend:

"A stock dividend really takes nothing from the property of the corporation, and adds nothing to the interests of the shareholders. Its property is not diminished, and their interests are not increased. After such a dividend, as before, the corporation has the title in all the corporate property; the aggregate interests therein of all the shareholders are represented by the whole number of shares, and the pro-

portional interest of each shareholder remains the same. The only change is in the evidence, which represents that interest, the new shares and the original shares together representing the same proportional interest that the original shares represented before the issue of new ones. * * * In short, the corporation is no poorer and the stockholder is no richer than they were before."

See, also, *Logan County v. U. S.*, 169 U. S., 255.

But more directly to the point at issue is the language of Chief Justice Chase in *Van Allen v. The Assessors*, 70 U. S., 598:

"It is true that the shareholder has no right to the possession of any part of the corporate property while the corporation exists and its affairs are honestly managed. He has committed his interest, for a time, to the possession and control of the corporation of which he is a member, and he has only a member's voice in the management of it. [fol. 70] "So a man who has leased a farm has no right to possession or control during the lease; but who denies his property in the farm? And if a dozen owners join in the lease, has not each one an interest in the property to the extent of one-twelfth?"

"So, if for the time the property of the shareholder is placed beyond his direct control and converted into property of the association, how can that circumstance affect the intrinsic character of his shares as shares of the whole corporate property? How can a man's shares of any property be the subject of valuation at all if not with reference to the amount and productiveness of the property of which they are a part? What value can they have except that given them by that amount and that productiveness? A certificate of title to a share is not a share. It is evidence of the shareholder's interest. His interest may be transferred by the transfer of the certificate; but it is not the certificate that is valued when the worth of the share is estimated either by the speculator in the market or by the tax assessor. It is the property which it represents that is valued by the speculator often with reference to speculation only, but by the public officer, always, if he does his duty, by the real worth of the property, all things considered."

To like effect is the language of Gray, J., in the case of *In Re Branson*, 150 N. Y., p. 8:

"The shareholders are persons who are interested in the operation of the corporate property and franchises and their shares actually represent undivided interests in the corporate enterprise. The corporation has the legal title to all the properties acquired and appurtenant; but it holds them for the pecuniary benefit of those persons who hold the capital stock. They appoint the persons to manage its affairs; they have the right to share in surplus earnings and, after dissolution, they have the right to have the assets reduced to money and to have them ratably distributed. Each share represents a distinct interest in the whole of the corporate property. As said in *Jermain v. L. S. & M. S. R. Co.* (91 N. Y., 492), it 'represents the interest which the shareholder has in the capital and net earnings of the corporation'; or, as Parke, B., put it, in *Bradley v. Holdsworth* (3 M. & W. at p. 424), it

[fol. 71] is 'a right to have a share of the net produce of all the property of the company.' Corporate shares must be regarded as property within the broad meaning of that term. Certificates of stock, in the hands of their holder, represent the number of shares which the corporation acknowledges that he is entitled to. In legal contemplation the property of the shareholder is either where the corporation exists, or at his domicile; accordingly as it is considered to consist in his contractual rights, or in his proprietary interest in the corporation. * * * Hence, it cannot be said, if the property represented by a share of stock has its legal situs either where the corporation exists, or at the holder's domicile, as we have said in the *Enston* and *James* cases, (*In re Enston*, 113 N. Y. 181; *in re James*, 144 id. 12), that the state is without jurisdiction over it for taxation purposes. As personality, the legal situs does follow the person of the owner; but the property is in his right to share in the net produce, and eventually, in the net residuum of the corporate assets, resulting from liquidation. That right as a chose in action must necessarily follow the shareholder's person; but that does not exclude the idea that the property, as to which the right relates and which is, in effect, a distinct interest in the corporate property, is not within the jurisdiction of the state for the purpose of assessment upon its transfer through the operation of any law, or of the act of its owner."

See, also, quotation from Knowlton, J., in *Greves v. Shaw*, *supra*.

It has been held that the owner of shares of stock in a corporation, organized for pecuniary profit, has an insurable interest in the corporate property—any qualified interest or any interest in the subject-matter being an insurable interest. *Warren v. Ins. Co.*, 31 Iowa, 464; *Seeman v. Ins. Co.*, 21 Fed., 778; *Ætna F. Ins. Co. v. Kennedy*, 161 Ala., 600. See, also, *Batts v. Sullivan*, 182 N. C., 129.

The basis of the rule making a corporation a distinct entity and the reasons for departing from such rule will be found in 14 C. J., 59:

"Although the doctrine that a corporation is a legal entity and person in the law distinct from the members who compose it will always be recognized and given effect, both at law and in equity, in cases [fol. 72] which are within its reason and when there is no controlling reason against it, and although in some cases it seems to have been given effect contrary to reason, it is clear that a corporation is in fact a collection of individuals who, in the case of modern private corporations, really own its property and carry on the corporate business, through the corporation and its officers and agents, for their own profit or benefit, and that the idea of the corporation as a legal entity or person apart from its members is a mere fiction of the law introduced for convenience in conducting the business in this privileged way; and it is now well settled, as a general doctrine, that, when this fiction is urged to an intent not within its reason and purpose, it should be disregarded and the corporation considered as an aggregation of persons, both in equity and at law."

It has been the policy of the Legislature of this State since 1887, to treat the interest of a stockholder in a domestic corporation, for

purposes of taxation, as identical with that of the corporation; and hence an individual stockholder is not required to list his shares of stock for taxation, where the State has already exercised the right to tax such shares through the corporation itself, or "at its source," as it is sometimes called. Speaking of this identification of the capital stock of a domestic corporation, in the hands of a shareholder, with the property of the corporation, for purposes of taxation, Adams, J., in *Person v. Watts*, 184 N. C., 499, said:

"So, by virtue of the statute there is nothing of value possessed by a corporation that is allowed to escape taxation. Certainly there can be no doubt that the shareholder's 'investment' is taxed as the Constitution requires. The truth is, the certificate of stock represents the shareholder's investment in the corporation as the landowner's deed represents his investment in the land. If the land is taxed, why tax the deed? If the capital stock is taxed, why tax the certificates which represent the capital stock? No doubt the Legislature possesses the power to repeal the statute and to tax both; no doubt it possesses the power to devise a system of taxation that would be more burdensome to all classes, but if the Constitution does not require it, why should such additional burden be imposed? It is not denied that [fol. 73] shares of stock in a restricted sense are the individual property of the owner, and in such sense may be considered as separate from the capital stock. The holder may sell his certificate without the consent of the company, but in doing so he sells only his interest in the corporation. His interest as a shareholder may become adverse to that of the corporation, but by investing in the capital stock he parts with the individual control of his money. It is only in this limited sense that shares of stock are separate from the corporation. In a broader and more real sense the interest of the shareholder is inseparable from that of the corporation. In the larger sense there is but one property, for shares of stock have value only as the taxed property of the corporation has value. During his lifetime the owner can derive no income from his shares unless the business of the corporation earns a profit; and upon his death, when his personal property passes to his distributee, it is not the certificate that is subject to an inheritance tax, but under a special statute the value of the owner's interest in the corporation represented by the certificate, just as such tax is assessed, not upon the deed, but upon the value of the land which descends from the ancestor to the heir. It seems, therefore, to be unquestionable that if the corporation be required to pay a tax on the capital stock as it is valued under the statute and the shareholders a similar tax on all their shares double the amount of the money or property contributed by the shareholders is thereby taxed, and no play upon words can escape the logic of this conclusion. The Constitution neither forbids nor requires double taxation, but the Legislature has refrained from levying the double tax. The Constitution requires that investments in stocks shall be taxed, but it does not forbid the exemption of shares from taxation when the capital stock itself is taxed. And as the controversy turns upon the validity or invalidity of the statutory exemption of shares of stock it is apparent that the question whether taxing the individual shares as well

as the capital stock is called double taxation is not as affecting the merits of the appeal a matter of material concern."

[fol. 74] This same rule is extended to certain foreign corporations and is applicable to the R. J. Reynolds Tobacco Company (of which its resident stockholders have taken advantage), as witness the following provision in the general revenue law:

"Nor shall any individual stock of any foreign corporation be required to list or pay taxes on any share of its capital stock if two-thirds in value of its entire property is situated and taxed in the State of North Carolina, or if such corporation has tangible assets within this State assessed for taxation at a value exceeding the par value of the total stock owned by citizens of this State, and the said corporation pays franchise tax on its entire issued and outstanding capital stock at the same rate as paid by domestic corporations."

Thus it will be seen that, for all practical purposes, so far as the question of taxation is concerned, the R. J. Reynolds Tobacco Company stands on substantially the same footing as a domestic corporation. It has come into the State upon this condition and accepted the benefit of our laws. It has domesticated here.

Applying the principle, above stated, to the instant case, it is apparent, we think, that Legislature intended to put aside the fiction of separate interests between the corporation and its shareholders and to impose an inheritance tax upon the transfer by will or devolution of the interests of non-resident stockholders in corporations, chartered in any other state or country, "when such incorporated company is the owner of property in this State, and if 50 per cent or more of its property is located in this State." Unless this view is to prevail, a corporation, created under the laws of another state, may come into North Carolina, with all its property located here and protected by our laws, with its entire business carried on in this State, and yet the holdings of every non-resident stockholder would be exempt from our inheritance-tax laws. It was the purpose of the Legislature to prevent such a contingency or possibility.

The foregoing considerations distinguished the case at bar from those cited and relied upon by appellant; but, if not entirely so, we must decline to follow them, as we think the act in question is constitutional.

The transfer now under consideration took place certainly by the permutation and under the ultimate protection, if not by the direct [fol. 75] operation, of our laws. *Thomas v. Matthiessen*, 232 U. S. p. 235, 58 L. Ed., 577. To point out the various differences between the authorities cited and the instant case would only be a work of supererogation. The alpha and omega of every case must be determined by the facts. We cite the authorities chiefly relied upon by appellant, all of which have been carefully scrutinized: *Tyler v. Dane County*, 289 Fed., 843; *In Re McMullen's Estate*, 192 N. Y. Sup., 49; *In Re Harkness Estate*, 83 Okla., 107, 204 Pac., 911; *S. v. Dunlop*, 28 Idaho, 784, 56 Pac., 1141; *Welch v. Burrill*, 223 Mass., 87, 111 N. E., 774; *Oakman v. Small*, 282 Ill., 360, 118 N. E.,

775; *People v. Griffith*, 245 Ill., 532, 92 N. E., 313; *People v. Dennett*, 276 Ill., 43, 114 N. E., 493.

The cases of *S. v. Brim*, 57 N. C., 300, and *Evans v. Monot*, 57 N. C., 228, are not at variance with our present position.

There is still another ground upon which the authority of a state to levy an inheritance tax has been upheld, namely, the necessity of resorting to the courts of the state to enforce a right acquired from a non-resident decedent. In *Re Houdayer*, 150 N. Y., 37. Deposits in a bank belonging to a non-resident owner at the time of his death and debts due from a resident to the estate of a non-resident decedent may be subjected to an inheritance tax in the state of the debtor's residence, in the latter case or where the bank is located in the former, notwithstanding the established legal fiction that the situs of a debt is usually at the residence of the creditor, for it is ordinarily at the residence of the debtor, if at all, that the debt may be enforced. *Blackstone v. Miller*, 188 U. S., 189; *Bliss v. Bliss*, 221 Mass., 201; In *Re Rogers*, 149 Mich., 305. *Contra*: *Gilbertson v. Oliver*, 129 Ia., 568.

The rights incident to a share of stock in a corporation—to partake of the surplus profits of the corporation, and ultimately, on its dissolution, to participate in the distribution of its assets, after payment of its debts—can be maintained and enforced only in the jurisdiction where the property of the corporation is situated. True, these rights, in the instant case, might be asserted in the Federal Courts; but, in its final analysis the rights of the parties would be determined, in a measure at least, by the laws of North Carolina. [fol. 76] Speaking to a similar question in *Bliss v. Bliss*, 221 Mass., 201, it was said:

"The bonds could not be collected by any process in the courts except by invoking Massachusetts law."

But it is contended that if the present assessment be sustained, it will result in requiring the payment of two or three taxes of like character by the same legatees for the one right of succession to the property in question. This unfortunate situation, if it be true, cannot control the determination of the question presented, for such a condition frequently arises, and, while its presence always, induces most careful consideration on the part of the courts, it must be submitted to unless it can be avoided under settled rules relating to the subject, especially in the face of a positive declaration by the law-making department.

"Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts". *Missouri T. & K. Ry. Co. v. May*, 194 U. S., 267.

It is further suggested that the Legislature of 1923, realizing the hardship occasioned by situations like the present, has modified the provisions of the law now under consideration; but, if so, this cannot

avail the plaintiff in the instant case. The testator died 29 October, 1919, while the provisions of the 1919 statute were in full force and effect.

From the foregoing, we conclude (1) that the defendant and the State Tax Commission have properly construed Chap. 90, Public Laws, 1919, as imposing the tax now in question; and (2) that the said act is constitutional.

The judgment of the Superior Court will be upheld.

Affirmed.

[fol. 77]

Addendum

Since the argument of this case and the preparation of the opinion, our attention has been called to a decision of the Supreme Court of Wisconsin, *Shepard v. State and Shepard v. Harper*, Public Administrator, decided 12 February, 1924, in which the conclusions reached by the United States District Court in the case of *Tyler v. Dane County*, *supra*, are sanctioned and approved. There are certain fundamental differences which distinguish this case, as well as the other authorities cited by plaintiff, from the case at bar. In the first place, Wisconsin, for all purposes, unlike North Carolina for purposes of taxation, adheres to the doctrine of separate and distinct interests between the capital of a corporation and its capital stock. "Such has been and still is the settled law of this State and it is beyond the power of the court to alter it even if it so desired", says the Wisconsin court. For some purposes, this distinction is very important, especially in dealing with the relative rights, *inter se*, of the corporation and its share holders; but for purposes of taxation, think it is within the power of the Legislature to treat the prorata interest of a stockholder in the corporate property as identical with that of the corporation, or simply as a share in the corporate entity. *Person v. Watts*, 184 N. C., pp. 516 and 517. Such was the direct holding of this Court in *Park v. Express Co.*, 185 N. C., 428. To paraphrase the language of Chief Justice Clark in that case, appearing on p. 433, it may be said here: In the present case the R. J. Reynolds Tobacco Company, though incorporated in New Jersey, is doing business in this State and is subject to its jurisdiction. The shares of stock held by the decedent at the time of his death in that company was an obligation of the company to its stockholder. It was the "property of the stockholder in the hands of the company doing business here."

[fol. 78] The question as presented to us is not one of policy for the courts, but one of power for the Legislature. It is peculiarly the function of the law-making body to levy assessments and to devise a scheme of taxation. *Trust Co. v. McFall*, 128 Tenn., 645. In the second place, the R. J. Reynolds Tobacco Company has its principal place of business in this State, with two-thirds of the total value of its entire property located herein, and for all practical purposes, so far as the question of taxation is concerned, it stands on substantially the same footing as a domestic corporation. It is domesticated

here. Similar conditions were not presented in any of the cases cited and relied upon by appellant.

[fol. 79] IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

JUDGMENT

This cause came on to be argued upon the transcript of the record from the Superior Court of Wake County:—upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is, therefore, considered and adjudged by the Court here, that the opinion of the Court, as delivered by the Honorable W. P. Stacy, Justice, be certified to the said Superior Court, to the intent that the judgment is affirmed. And it is considered and adjudged further, that the plaintiff Rhode Island Hospital Trust Company and surety to appeal bond do pay the costs of the appeal in this Court incurred, to-wit, the sum of Forty-nine 35/100 dollars (\$49.35), and execution issue therefor.

[fol. 80] IN SUPREME COURT OF NORTH CAROLINA

CLERK'S CERTIFICATE

I, Edward C. Seawell, Clerk of the Supreme Court of the State of North Carolina, do hereby certify the foregoing to be a full, true and correct copy of the proceedings in this Court in the cause entitled, Rhode Island Hospital Trust Co., executor of George Briggs, deceased, vs. Rufus A. Doughton, Commissioner of Revenue for the State of North Carolina.

Witness my hand and seal of said Court at office in Raleigh this 6 June 1924.

Edward C. Seawell, Clerk of the Supreme Court of the State of North Carolina. (Seal of the Supreme Court of the State of North Carolina.)

Endorsed on cover: File No. 30,436. North Carolina Supreme Court. Term No. 106. Rhode Island Hospital Trust Company, executor of George Briggs, deceased, plaintiff in error, vs. Rufus A. Doughton, Commissioner of Revenue of the State of North Carolina. Filed June 23, 1924. File No. 30,436.

